



ASIC

Australian Securities & Investments Commission

REPORT 548

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

October 2017

About this report

This report highlights the key issues that arose out of the submissions received on proposed minor changes to *Regulator Performance Framework: ASIC 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 The Regulator Performance Framework (Framework), which has applied since 1 July 2015, was established by the Australian Government as part of its deregulation agenda. The Framework provides a set of six common key performance indicators (KPIs) for Australian Government regulators. These KPIs cover the following areas: reducing regulatory burden, communication, risk-based and proportionate approaches to regulation, efficient and coordinated monitoring, transparency, and continuous improvement of regulatory frameworks.
- 2 The Framework is one component of ASIC's suite of performance reporting tools, which also includes our annual report and reports on our enforcement, market integrity and regulatory reform activities.
- 3 In July 2015, we first published the [Regulator Performance Framework: ASIC evidence metrics](#) (PDF 112 KB), a set of evidence metrics to support the KPIs under the Framework, and against which we report on our performance. We completed and reported our self-assessment against these metrics in [Report 511 Regulator Performance Framework: ASIC self-assessment 2015–16](#) (REP 511), which we published in January 2017.
- 4 During the self-assessment, it became apparent that some of the metrics had become outdated as our business processes changed over time. In addition, a number of the metrics were repeated under different KPIs, which made it difficult to tell a cohesive story about our performance against the Framework.
- 5 In June 2017, we undertook a targeted consultation on a proposal to refine the evidence metrics that we report against the Framework.
- 6 Specifically, the proposed amendments:
 - (a) group together related KPIs, to tell a coherent story on discrete topics. We proposed grouping the following KPIs:
 - (i) KPIs 1 and 6, which we consider are complementary. KPI 1 relates to how we administer the regulatory framework to minimise any unnecessary regulatory burden. KPI 6 relates to how we contribute to the process of improving the regulatory framework itself, such as by providing policy advice to government. Both of these KPIs contribute to ensuring that our stakeholders are subject to efficient and appropriate regulation that minimises regulatory costs;
 - (ii) KPIs 2 and 5, which primarily concern how effectively we communicate our expectations around the behaviour of our regulated population, including through our guidance, engagement and education activities; and

- (iii) KPIs 3 and 4, which primarily concern the effectiveness and efficiency of our approach to detecting, understanding and responding to regulatory risks and breaches, principally through surveillance and enforcement;
 - (b) rationalise the evidence metrics so that each metric is only listed once and is placed under the most relevant KPI; and
 - (c) amend those metrics that reflect ASIC processes that have changed.
- 7 The proposed refinements would allow us to produce a self-assessment that more clearly reflects our performance, and is more succinct, relevant and accessible to stakeholders.
- 8 This report highlights the key issues that arose out of the submissions received through the consultation, and our responses to those issues.
- 9 This report is not meant to be a comprehensive summary of all responses received. We have limited this report to the primary issues raised by stakeholders.
- 10 We received four non-confidential responses from the organisations we approached. We are grateful to respondents for taking the time to send us their comments.
- 11 For a list of the non-confidential respondents, see Appendix A. Copies of these submissions are available on the ASIC website under at www.asic.gov.au/reports under REP 548.

Responses to consultation

- 12 The main issues raised by respondents related to:
- (a) enhancing specific metrics by, for example:
 - (i) assessing the appropriateness of the actions we have taken; or
 - (ii) including metrics that are directly relevant to each regulated population;
 - (b) the suggested KPI groupings; and
 - (c) the perceived lack of quantifiable measures used in the Framework;
- 13 Section B of this report sets out the key issues raised during our consultation, and our response to each of these. Ultimately, we decided not to make any changes to the evidence metrics we proposed.
- 14 The final evidence metrics are published in the [Regulator Performance Framework: ASIC evidence metrics \(October 2017\)](#). See Appendix B for a full list of the new and amended metrics.

B Feedback on proposed changes

Key points

This section outlines the submissions received on our proposals to refine the evidence metrics that we report against the Framework.

The feedback we received in response to our consultation related to:

- further enhancements to specific metrics;
- grouping related KPIs;
- rationalising the evidence metrics; and
- amending the evidence metrics to reflect changed ASIC processes.

This section also outlines our response to this feedback.

Enhancing specific metrics

- 15 Stakeholders were generally supportive of our proposal to refine the evidence metrics.
- 16 Stakeholders also provided feedback on additional changes we could make to meet the aims of the Framework. Some respondents suggested that we should:
- (a) assess the appropriateness of the actions we have taken to achieve our key objectives;
 - (b) include metrics that are directly relevant to each regulated population, and assess our performance separately for each; and
 - (c) increase the number of quantifiable measures and be more specific about the frequency with which we will seek feedback to measure perceptions of consumer and investor trust and confidence and market integrity.

ASIC's response

We consider that measuring the appropriateness of our actions would likely require us to make subjective determinations about the suitability of our own approaches to regulation. Instead, we will be transparent about our plans, procedures and activities, so that stakeholders can reach their own conclusion about the appropriateness of our actions.

The Framework was designed to provide common performance measures to assess how Australian Government regulators operate. Our evidence metrics cover the processes and regulatory approaches we use across ASIC. We therefore

consider it appropriate to set a range of quantitative and qualitative metrics—and report against our performance—at the whole of organisation level. We also note that, as a practical matter, many metrics must necessarily be measured across the organisation.

We also note that there are other ways that we measure and report on our performance—for example, our annual report includes information about our regulatory activities sector-by-sector each year.

Further, under the new industry funding framework, we will be reporting sector-by-sector information in our Cost Recovery Implementation Statement (CRIS). The CRIS will include detailed information about ASIC's regulatory activities and costs for each regulated population—for example, the insurance sector and the financial advice sector.

We have published a version of our first [CRIS for stakeholder feedback](#), and expect to publish the final version in early 2018.

Grouping related KPIs

- 17 Stakeholders were generally supportive of our proposal to group related KPIs in order to tell a more cohesive story about ASIC's performance.
- 18 One submission, however, argued that KPI 1 *Regulators do not unnecessarily impede the efficient operation of regulated entities* and KPI 6 *Regulators actively contribute to continuous improvement of regulatory frameworks* do not have the natural overlap that the other grouped KPIs have, and that merging these KPIs should be reconsidered.

ASIC's response

As we stated earlier, we consider that KPIs 1 and 6 are complementary. KPI 1 relates to how we administer the regulatory framework to minimise any unnecessary regulatory burden. KPI 6 relates to how we contribute to the process of improving the regulatory framework itself, such as by providing policy advice to government. Both of these KPIs contribute to ensuring that our stakeholders are subject to efficient and appropriate regulation that minimises regulatory costs.

Our statutory mandate obliges us to perform our functions and exercise ASIC's powers in the interests of reducing business costs. This means we aim to achieve legislative regulatory priorities with minimum cost to and burden on our industry stakeholders. We also aim to ensure that the regulatory framework can facilitate new and innovative ideas.

We administer complex and wide-reaching laws and we attempt to do this in the least onerous way possible.

Rationalising the evidence metrics

- 19 We received minimal feedback on our proposal to rationalise the evidence metrics so that they only appear once and under the most relevant KPI. The feedback we did receive was in favour of this proposal.

Amending the evidence metrics to reflect changed ASIC processes

- 20 Some respondents were concerned about our proposal that some metrics (e.g. evidence metrics 1.1.2, 2.1.6 and 2.3.4)—regarding taking stakeholder surveys to obtain feedback on trust, confidence and market integrity, on ASIC's openness and transparency, and on the use and value of ASIC guidance and responsiveness—now refer to ASIC generally 'seeking feedback'.

ASIC's response

Some metrics relating to stakeholder surveys have been amended because we did not conduct a stakeholder survey in 2016–17. This was because stakeholder perceptions of ASIC have been analysed in numerous contexts in recent years, including the ASIC Capability Review, the Senate inquiry into the performance of ASIC, and the Financial System Inquiry.

Instead, we seek to obtain stakeholder feedback in a number of ways. For example, we have recently reviewed a combination of external and internal research reports and identified existing research metrics that indicate levels of stakeholder trust and confidence in specific industry sectors that we regulate. These metrics focus on how each sector is delivering on what ASIC sees as good practice, or 'what good looks like'.

We published [ASIC's Corporate Plan 2017–18 to 2020–21: Focus 2017–18](#) on 31 August 2017. This corporate plan sets out how we will measure our performance based on our desired market outcomes, which are indicators of perceived and actual behaviours that demonstrate trust and confidence in the financial system, and our desired regulatory outcomes, which reflect what we do using our regulatory tools.

We also undertake a wide range of stakeholder engagement activities—both at the Commission and stakeholder team levels—that enable stakeholders to provide feedback to ASIC directly.

These actions are in addition to our various stakeholder panels and our Annual Forum, which are also venues for stakeholders to provide feedback (and are included under evidence metrics 1.1.4 and 1.1.5), as is our continued accountability to Parliament for our actions.

Appendix A: List of non-confidential respondents

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- Australian Institute of Company Directors
 - Australian Restructuring Insolvency and Turnaround Association
 - Insurance Council of Australia
 - Institute of Public Accountants
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Appendix B: Comparison of new and previous evidence metrics

Table 1: Comparison of new and previous evidence metrics—1.1 Understanding the market

New KPI	New evidence metric	Previous evidence metric	Previous KPI
1 and 6	1.1.1 ASIC publishes an environmental scan and risk outlook as part of its corporate plan.	ASIC's corporate plan, including environmental scan, is published annually.	1
1 and 6	1.1.2 ASIC seeks regular feedback from stakeholders to measure perceptions of trust and confidence and market integrity.	Stakeholder surveys are targeted and conducted regularly, and the results and ASIC's response are published.	1, 2, 3, 4, 5
1 and 6	1.1.3 ASIC holds regular meetings with key stakeholders—including industry, professional body representatives, consumer advocates and small business—through internal contact points.	<i>No change to previous metric</i>	6
1 and 6	1.1.4 Stakeholder panels meet regularly.	Stakeholder panels—including the External Advisory Panel, Directors' Advisory Panel, Market Supervision Advisory Panel, Consumer Advisory Panel, and Registry and Licensing Business Advisory Committee—meet regularly.	1, 3
1 and 6	1.1.5 ASIC holds an Annual Forum.	<i>No change to previous metric.</i>	6

Table 2: Comparison of new and previous evidence metrics—1.2 Making it easier for business

New KPI	New evidence metric	Previous evidence metric	Previous KPI
1 and 6	1.2.1 ASIC complies with Office of Best Practice Regulation requirements, including preparing cost-benefit analyses in Regulation Impact Statements for significant regulatory changes.	<i>No change to previous metric.</i>	1, 3
1 and 6	1.2.2 New or revised guidance provides for reasonable transition periods where possible.	<i>No change to previous metric.</i>	5

New KPI	New evidence metric	Previous evidence metric	Previous KPI
1 and 6	1.2.3 ASIC regularly publishes a report summarising examples of situations where it has exercised, or refused to exercise, exemption and modification powers in response to applications for relief from the law.	A relief report is published every four months on decisions about applications for relief.	1, 5
1 and 6	1.2.4 ASIC publishes service standards for making decisions about applications for relief and reports annually on its performance.	Relief is granted in response to applications where warranted to facilitate business, with 70% of applications for relief responded to within 21 days of receiving a complete application.	1

Table 3: Comparison of new and previous evidence metrics—1.3 Continuous improvement of regulatory frameworks

New KPI	New evidence metric	Previous evidence metric	Previous KPI
1 and 6	1.3.1 Where appropriate, ASIC identifies and proposes opportunities to improve the regulatory framework, including as a result of post-implementation reviews.	<i>No change to previous metric.</i>	6
1 and 6	1.3.2 ASIC attends relevant international meetings and participates in relevant committees to promote better coordination of regulatory activities internationally, participate in standard setting, and to learn from peer experiences and share best practice.	<i>No change to previous metric.</i>	1
1 and 6	1.3.3 ASIC publicly reports peer review results against relevant international practices and standards when peer review is undertaken.	<i>No change to previous metric.</i>	1
1 and 6	1.3.4 ASIC provides advice to the Minister and Treasury concerning possible improvements to the regulatory framework that it identifies in performing its functions.	ASIC formally meets with Treasury (ASIC–Treasury liaison) regularly. ASIC provides advice to the Minister and to Treasury concurrently.	6

New KPI	New evidence metric	Previous evidence metric	Previous KPI
1 and 6	<i>Previous evidence metric will be deleted and replaced with more specific measures (i.e. 1.1.3, 1.1.4 and 1.3.1).</i>	ASIC seeks input on and delivers measures to improve the administration of the regulatory framework.	6

Table 4: Comparison of new and previous evidence metrics—2.1 Interacting with ASIC

New KPI	New evidence metric	Previous evidence metric	Previous KPI
2 and 5	2.1.1 ASIC publishes service standards for registering companies, business names, managed investment schemes, auditors and liquidators, and reports annually on its performance.	<i>New metric.</i>	N/A
2 and 5	2.1.2 ASIC publishes service standards for licensing financial services and credit businesses and reports annually on its performance.	<i>New metric.</i>	N/A
2 and 5	2.1.3 ASIC publishes complaint guidelines and keeps them up to date.	<i>No change to previous metric.</i>	2
2 and 5	2.1.4 ASIC addresses complaints in accordance with complaint guidelines.	<i>No change to previous metric.</i>	2
2 and 5	2.1.5 ASIC publishes policies and procedures about rights of review are published.	<i>No change to previous metric.</i>	2
2 and 5	2.1.6 ASIC seeks feedback on its level of openness and transparency in dealing with regulated entities.	The stakeholder survey specifically seeks feedback on openness and transparency in dealing with regulated entities.	5

Table 5: Comparison of new and previous evidence metrics—2.2 Communicating ASIC's expectations

New KPI	New evidence metric	Previous evidence metric	Previous KPI
2 and 5	2.2.1 ASIC uses a variety of media and direct channels to convey information to all stakeholders.	<i>No change to previous metric.</i>	6
2 and 5	2.2.2 Extensive guidance and information is available on ASIC's website.	<i>No change to previous metric.</i>	2, 5

New KPI	New evidence metric	Previous evidence metric	Previous KPI
2 and 5	2.2.3 ASIC regularly publishes reports to inform regulated entities of ASIC's approach and expectations.	<i>No change to previous metric.</i>	3
2 and 5	2.2.4 Regulated entities are able to access the information they need on ASIC's website; this information is available in accordance with Government accessibility guidelines.	<i>No change to previous metric.</i>	2
2 and 5	2.2.5 ASIC regularly reviews and updates resources in the Customer Contact Centre, and available for staff use for routine inquiries.	Call centre scripts are available for staff use for routine inquiries.	2
2 and 5	<i>Previous evidence metric will be deleted and replaced with more specific measures (i.e. 1.1.3, 2.2.2 and 2.2.3).</i>	ASIC engages with industry, professional body representatives and consumer advocates to accurately target and extend communication efforts.	2

Table 6: Comparison of new and previous evidence metrics—2.3 Consulting with stakeholders

New KPI	New evidence metric	Previous evidence metric	Previous KPI
2 and 5	2.3.1 Consultation papers are published for major new policies, with clarity about where market failures are or may be.	Consultation papers are clear about where market failures are or may be.	3, 5
2 and 5	2.3.2 Consultations are open for at least eight weeks for major new policies where possible, with user testing of proposals where appropriate.	<i>No change to previous metric.</i>	5
2 and 5	2.3.3 Feedback is published following 100% of formal consultation processes.	<i>No change to previous metric.</i>	1, 5
2 and 5	2.3.4 ASIC seeks stakeholder feedback on the use and value of ASIC guidance and ASIC's responsiveness.	The stakeholder survey specifically seeks feedback on the use and value of ASIC guidance and ASIC's responsiveness.	2

Table 7: Comparison of new and previous evidence metrics—2.4 Performance measurement and reporting

New KPI	New evidence metric	Previous evidence metric	Previous KPI
2 and 5	2.4.1 ASIC's corporate plan is published annually.	<i>No change to previous metric.</i>	5
2 and 5	2.4.2 ASIC publishes a Statement of Intent and a Statement of Expectations	<i>No change to previous metric.</i>	3
2 and 5	2.4.3 ASIC publishes a service charter and reports against it, including explanations where standards are not met.	<i>No change to previous metric.</i>	2
2 and 5	2.4.4 ASIC's Annual Report is published and includes reporting against the corporate plan and service charter, including explanations where outcomes or standards are not met.	<i>No change to previous metric.</i>	5
2 and 5	2.4.5 ASIC's self-assessment report and external validation of the Regulator Performance Framework are published annually.	<i>No change to previous metric.</i>	5

Table 8: Comparison of new and previous evidence metrics—3.1 Risk-based surveillance

New KPI	New evidence metric	Previous evidence metric	Previous KPI
3 and 4	3.1.1 ASIC undertakes a strategic risk assessment annually, which is published as part of its corporate plan.	ASIC's corporate plan, including a summary of risk oversight and management systems, is published annually.	3
3 and 4	3.1.2 A documented, risk-based surveillance approach is available for staff use, with surveillances—including high-intensity surveillances—conducted using this approach.	<i>No change to previous metric.</i>	3, 4
3 and 4	3.1.3 Relevant staff—including relevant new staff—are trained in risk management policies, processes and procedures.	<i>No change to previous metric.</i>	3

Table 9: Comparison of new and previous evidence metrics—3.2 Enforcement and transparency

New KPI	New evidence metric	Previous evidence metric	Previous KPI
3 and 4	3.2.1 ASIC's approach to enforcement is published, which includes options for a graduated approach to compliance and enforcement.	<i>No change to previous metric.</i>	3, 4
3 and 4	3.2.2 ASIC regularly publishes a report about its enforcement actions.	ASIC publishes an enforcement report every six months about enforcement actions.	3, 5

Table 10: Comparison of new and previous evidence metrics—3.3 Information requests

New KPI	New evidence metric	Previous evidence metric	Previous KPI
3 and 4	3.3.1 Formal information requests to regulated entities are targeted and take into account other formal requests for information.	<i>No change to previous metric.</i>	4
3 and 4	3.3.2 Formal sign-off, involving senior staff and legal officers, precedes all formal requests for information.	<i>No change to previous metric.</i>	4
3 and 4	3.3.3 ASIC uses data from other sources where appropriate.	<i>No change to previous metric.</i>	4

Table 11: Comparison of new and previous evidence metrics—3.4 Cooperation with other regulators

New KPI	New evidence metric	Previous evidence metric	Previous KPI
3 and 4	3.4.1 ASIC establishes coordinated approaches with peer regulators, including published memoranda of understanding and undertaking joint surveillance where appropriate.	Memoranda of understanding with peer regulators, detailing coordination approaches are published where appropriate. ASIC undertakes joint surveillance where appropriate by reference to a case study.	4