

30 January 2019

Andrew Fawcett
Senior Executive Leader, Strategic Policy
Australian Securities and Investments Commission
GPO Box 9827
Sydney NSW 2001

Via email: andrew.fawcett@asic.gov.au

Dear Mr Fawcett

ASIC draft self-assessment 2017-2018

Thank you for the opportunity to provide feedback on ASIC's draft 2017-2018 self-assessment of performance against the Australian Government's 'Regulator Performance Framework'.

The Australian Institute of Company Directors (AICD) has a membership of more than 43,000 including directors and senior leaders from business, government and the not-for-profit sectors. The mission of the AICD is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society.

Approach to self-assessment

As an overall comment, the self-assessment process presents a valuable opportunity for regulators to reflect on areas for improvement in performance, and communicate ways in which they plan to address them.

While the draft self-assessment comprehensively addresses the evidence metrics that have been developed by ASIC to assess its performance against each KPI, we consider that there is scope to more critically analyse *outcomes*, as well as to provide insights into where ASIC considers its performance should be improved.

We recognise that the approach taken in the draft self-assessment is in part a product of the evidence metrics themselves, however, given the matters raised during the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (including during the assessment period), along with the focus on accountability and transparency at an industry and regulator level alike, we consider it is worth revisiting the approach and applying a more critical lens.

In this regard, we note that the introduction to the Regulator Performance Framework provides that it 'will allow regulators to report objectively on the outcomes of their efforts to administer regulation fairly, effectively and efficiently'. It also contemplates that 'it will be a useful tool for regulators to identify opportunities for improvement and better target their resources for greater impact.'

We are concerned that the current draft self-assessment does not meet those objectives given there is little discussion of where there may have been under-performance.

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Evidence metrics

The AICD has in the past queried the grouping together of 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*). We continue to hold the view that they do not have a natural grouping in the way the other grouped KPIs do, particularly recognising that the objectives of making it easier for business and improving regulatory frameworks will not always be harmonious.

Stakeholder engagement

We endorse the summation of ASIC's approach to stakeholder engagement. It has been AICD's experience that, during the assessment period, the regulator has genuinely engaged on matters of policy through various committees, formal consultations and on an ad-hoc basis.

The AICD welcomes and encourages ASIC's continued engagement with stakeholders, including on a proactive basis.

Approach to enforcement

Given the evidence presented during the Royal Commission hearings, the self-assessment processes may present another opportunity to address certain of the issues raised. We consider that such issues could be discussed in relation to KPI 3 (*Actions undertaken by regulators are proportionate to the regulatory risk being managed*) and KPI 4 (*Compliance and monitoring approaches are streamlined and co-ordinated*).

In the AICD submission to the interim report of the Royal Commission, we supported a more proactive approach to enforcement by ASIC to achieve deterrence (while noting the need for ASIC to retain its discretion to use the appropriate regulatory tools).

We note the discussion in the draft self-assessment on the Interim Enforcement Measures, and suggest that it may benefit from further detail on how this is intended to assist in engendering community confidence and achieving deterrence, given the misconduct and resulting poor customer outcomes that came to light during the assessment period.

We also indicated in our submission to the Royal Commission that further enhancements to reporting practices may assist in bolstering accountability and transparency. For example, it may assist if there is greater clarity around ASIC's enforcement priorities and how it intends to approach particular types of matters (including, for example, through illustrative case studies). This could be reflected in ASIC's annual reports, as well as an update to *Information Sheet 151 ASIC's approach to enforcement* (September 2013). It may also assist for ASIC to indicate annually the proportion of its annual budget allocated to enforcement.

Finally, in relation to KPI 4, ASIC may wish to consider including further detail on the relationship between ASIC and APRA in particular, and any comments on the effectiveness of the operation of the twin peaks model of regulation (including in the context of regulation of the superannuation sector). We note that the self-assessment states that ASIC is seeking to improve its co-operation with APRA even further.

Continuous improvement of regulatory frameworks

We have previously suggested, post the defunding of the Corporations and Markets Advisory Committee (**CAMAC**), that ASIC collaborate with the private sector and Treasury to establish a dedicated mechanism to ensure Australia's corporate regulation is fit for purpose. This may enhance ASIC's contribution to the continuous improvement of regulatory frameworks (KPI 6).

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Next steps

We note that the public consultation on the ASIC draft self-assessment closes on 30 January 2019. Given the Royal Commission is set to provide its final report after that date, we would recommend that the final ASIC self-assessment takes its findings and analysis into account.

We hope our comments will be of assistance. If you would like to discuss any aspect of this letter, please contact Sally Linwood, Senior Policy Adviser, slinwood@aicd.com.au, or Christian Gergis, Head of Policy, at cgergis@aicd.com.au.

Yours sincerely



LOUISE PETSCHLER
General Manager, Advocacy