



FINANCIAL
SERVICES
COUNCIL

Invitation to make a submission on ASIC's Performance against the Regulator Performance Framework

Financial Services Council Submission: 7 February 2020



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1. About the Financial Services Council (FSC)

The FSC is a leading peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing \$3 trillion on behalf of more than 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the fourth largest pool of managed funds in the world.

2. Introduction

The FSC welcomes the opportunity to provide feedback on ASIC's performance against the Australian Government's Regulator Performance Framework (**RPF**) over the 2018-19 reporting period. For this purpose, as requested, we have commented on ASIC's draft self-assessment on its performance in 2018-19 against the evidence metrics (**draft**).

Our comments follow the ASIC division in the draft into the six mandated, common, outcomes-based KPIs set by Government.

3. Key Comments

Our key observation in relation to the draft is that although we are in general agreement with the ASIC self-assessment, we do have concerns as to the approaches taken by ASIC to information requests and the failure on some occasions to liaise with the Australian Prudential Regulation Authority (**APRA**). Commonly, similar information has been sought by each of ASIC and APRA but using different methodologies and data sets. This creates business costs and inefficiencies and also raises, in our view, unfair perceptions that elements of the industry are poor record keepers.

Having said that, we do note that proposed legislation is designed to address the issue of cooperation between ASIC and APRA. We have responded to the Exposure Draft of that legislation and have made further comments below concerning our submission and provided specific examples of areas where there could have been improvements on the part of ASIC.

Our detailed comments are set out below.

4. **KPI 1: Regulators do not unnecessarily impede the efficient operation of regulated entities** **KPI 6: Regulators actively contribute to continuous improvement of regulatory frameworks**

We note the examples and comments in the draft in support of ASIC's position. Generally, we agree with the comments and the information provided. However, we believe improvements can be made and in this regard we refer specifically to our 24 January 2020 submission to Treasury on the on the Exposure Draft of the *Financial Regulator Reform (No. 2) Bill 2019: Governance (FSRC Recommendations 6.9 and 6.11)*: **(ED)**. In that submission, **(Treasury Submission)**, we highlighted the inefficiencies and additional costs which arise because of a failure of cooperation between ASIC and APRA.¹We made a number of suggestions as to how the ED could be improved so as to benefit Regulator and business efficiency. This would benefit consumers of financial products and services in that the additional costs which business must meet because of these inefficiencies would not arise and thus would not be passed on to consumers.

We will not repeat all of the comments we made in the Treasury Submission. We however will summarise the relevant issues as these do impact on ASIC's self-assessment for these particular KPIs. Our summary is as follows:

- (a) Each Regulator commonly traverses the same operational field, for example, APRA and ASIC information requests of the same insurers. It is commonplace, in our experience, for each Regulator to require financial service entities to provide similar information but in slightly different forms. A current example of this is the recent and quite significant insurance information requests by ASIC; some elements of which APRA already holds or holds in a slightly different format. This gives rise to a significant amount of unnecessary cost, inefficiencies and duplication for our members; particularly life insurers and RSE licensees. In the end result, it is policy holders and superannuation fund members who meet these additional costs (as a result of premium increases or returns reduced to meet costs of complying with these overlapping and differing forms of requests).
- (b) We also note that the requirement to retain and produce information in a certain format for one Regulator and then having to re-work it for another and taking time to do so, furthers the (often mistaken) perception that entities have poor data retention and extraction capabilities. Indeed, this criticism was made in *ASIC Report 633 Holes in the safety net: A review of TPD insurance claims* (Report 633).²
- (c) ASIC high-level "thematic" investigations – such as those resulting in Report 633, in relation to this matter, we note that:

¹ **Regulators.**

² ASIC, October 2019.

<https://download.asic.gov.au/media/5311117/rep633-published-17-october-2019.pdf>

- (i) ASIC requested insurers provide very detailed data – 64 data points on each TPD claim over a two-year period, including customer name and address, presumably to facilitate customer surveys by ASIC;
 - (ii) these data requests differed from similar TPD data previously collected by APRA; and
 - (iii) ASIC however, could have conducted an initial high-level analysis on the APRA data and then requested insurers provide data on “customers of interest” (such as name and addresses). This would have reduced significantly the burden on insurers. It would have resulted in ASIC using same data as that held by APRA.
- (d) In Report 633 at paragraph 20, ASIC estimated the number of “Australians” with TPD cover in superannuation based on ADLs to be 480,000, starting with the flawed premise that 12 million Australians had TPD cover in super in 2018, without giving a source for the number. APRA confirmed to FSC in writing that there were 12 million superannuation accounts with TPD in 2018. This is not the same as 12 million “Australians” because of multiple superannuation accounts (1.57 per each Australian in 2018 according to ATO data). FSC estimates the number of affected Australians to be 306,000 in 2018. ASIC’s flawed estimate had the effect of significantly overstating the extent of the issue in the report, which was compounded in the media release where the number 480,000 appeared to be rounded up to “nearly half a million Australians”. We also note that ASIC used other data that was out of date in the report. A further example of non-alignment is that between the ASIC Life Insurance Framework (**LIF**) reporting and APRA LRS 750³ is set out below.
- (i) sums insured for income protection products are annualised under ASIC LIF but reported per calendar month for APRA LRS 750; and
 - (ii) lapse reporting is not measured like for like under APRA LRS 750 and ASIC LIF (a different methodology is used).
- (e) It is also worth noting, as mentioned in (a) above, that the definitions provided for ad hoc ASIC requests (such as the recent Value for Money in Insurance notice provided to some trustees) often do not align with existing APRA definitions. This increases the length of time insurers take to respond to ad hoc regulatory requests.
- (f) Further, other regulatory bodies and industry bodies, often request information in different formats from that requested by ASIC. As mentioned in the Treasury Submission, these bodies include the Life Code Compliance Committee and the Australian Taxation Office.

In summary then, we feel that ASIC’s self-assessment should take into account the apparent lack of communication between ASIC and other Regulators in making information requests. In our view, the outcome is that the efficient operation of regulated entities in this area is compromised and the regulatory framework at least in this respect, cannot be said to be subject to continuous improvement.

³ Noting that LRS 750 data is shared between ASIC and APRA but life insurers submit their data directly to APRA.

Going forward, we suggest that in order to minimise the cost to industry of data requests:

- For **existing** regular data requests – that ASIC and APRA work with industry to ensure that, wherever possible, data specifications are aligned so that existing data can be re-purposed and multiple requests for similar, but slightly different, data can be minimised.
- For any **new** data requests that:
 - o The objective of the request is clearly stated.
 - o A cost/benefit analysis is undertaken to ensure that the cost to industry is proportionate to the anticipated benefit to consumers.
 - o Industry is consulted on the proposed data specification to ensure that the data can be collected in the most efficient way.

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

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

We note the comments made in the draft. We have noticed over the relevant period in improvement in the level of discussion and openness with us as an advocacy body for a range of regulated entities. An example is the range of measures taken by ASIC in relation to fees and costs disclosure to address industry and consumer concerns.

5. KPI 3: Actions undertaken by regulators are proportionate to the regulatory risk being managed
KPI 4: Compliance and monitoring approaches are streamlined and coordinated

We note the comments made in the draft. Again, we would express our general agreement. However, we note that there is reference to cooperation with other Regulators, including APRA and the Australian Taxation Office. As we mentioned in the Treasury Submission, we believe it is appropriate for a Memorandum of Understanding to be entered into between ASIC, the Australian Taxation Office and APRA.

Further, although the Australian Financial Complaints Authority, (**AFCA**) does not seem to be mentioned in the draft, it is important to note the impact of differing regimes on providers (and thus ultimately consumers), in the context of internal dispute resolution. The data sets that each of ASIC, APRA and AFCA request of providers in this context, differ.

These examples demonstrate that although there may well be cooperation with other Regulators and putting to one side the potential impact of the ED, that cooperation could have been improved and been more focused during the relevant period to avoid business inefficiencies and disruption. As we have mentioned, ultimately it is consumers who bear the additional costs caused by this situation.

Should you have any questions, please do not hesitate to contact us.