

Friday, 29 May 2015

Ms Melisande Waterford
Senior Manager Policy Development
Australian Prudential Regulation Authority

By email only

Dear Ms Waterford

APRA KPIs under the Regulator Performance Framework

The Financial Services Council (**FSC**) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, licensed trustee companies and public trustees.

Background to our comments in this submission

1. Thank you for the opportunity, and extension of time, to comment on the Regulator Performance Framework (the **Framework**) which is designed to assess the extent to which the regulator's performance minimises regulatory burden in the course of fulfilling its activities.
2. This submission contains some general comments on the Framework and KPIs, as well as some specific comments on the draft KPIs. This submission is in two sections – *General Comments on the Framework and APRA KPIs* and *Specific Comments on APRA's KPIs*. We request that APRA consider all our comments. If APRA considers that any of our comments are out-of-scope for APRA, we request that APRA refer such (out-of-scope for APRA) comment to the Department of the Prime Minister and Cabinet (the **Department**). ASIC made a similar offer and we request the same approach be adopted by APRA.
3. Our demarcation between *General Comments on the Framework and APRA KPIs* and *Specific comments on APRA's KPIs* is not determinative, and we expect APRA to consider all our comments (irrespective of where they appear in this submission) which APRA considers in-scope for APRA and to refer the balance to the Department. Our attempted demarcation is designed to assist APRA but we rely on APRA's determination as to what it considers out-of-scope and therefore should be referred by APRA to the Department.
4. This submission reflects the feedback provided by FSC members on the Framework and KPIs.

General Comments on the Framework and APRA KPIs

The Framework is a self-assessment, rather than an independent (external) assessment of APRA

5. While we have some (constructive) criticisms of the design of some aspects of the Framework (namely that the assessment is not independent of the assessed regulator), we do support in general terms the Government's initiatives in relation to the Regulator Performance Framework and in particular we are pleased with the Government's focus on reducing regulatory burden in the course of APRA fulfilling its objectives. We acknowledge APRA already has an eye to aiming to regulate without unnecessary burdens, such as APRA's recent consultation (and ongoing processes) in relation to areas where the regulatory burden may be reduced by APRA without compromising on prudential objectives.
6. We do not support the proposed *self-assessment* model. Our preference is that any assessment of APRA's performance is undertaken by an external independent party, and that the assessment include a mechanism for the option of anonymous feedback from stakeholders, including regulated entities. (Some regulated entities may be coy in expressing dissatisfaction with a regulator to the regulator so anonymity should be allowed for.)

Any stakeholder survey for the purposes of the Framework should be annual (as is the self-assessment)

7. We consider the stakeholder survey *obtained for the purposes of the Regulator Performance Framework* should be annual not biennial as proposed by APRA. The financial services sector is subject to a breadth of requirements. A less than annual survey (*for the purposes of the Regulator Performance Framework*) forming part of the external stakeholder validation of APRA's *annual* self-assessment, is not sufficient to consider in a timely manner the view of external stakeholders of APRA's *annual* self-assessment under the Regulator Performance Framework.
8. The *Regulator Performance Framework* assessment process should complement existing methods of oversight / accountability such as Senate Estimates, and not replace these forums.
9. The assessment (or metrics relating to that) of APRA should include consideration of benchmarking with other regulators overseas.
10. As APRA notes, APRA has already committed to undertaking (outside of and independent of the recently introduced Regulator Performance Framework) a comprehensive survey every two years of APRA-regulated institutions and other stakeholders. This broader stakeholder survey should remain and is valued. As APRA points out, the Regulator Performance Framework is just one component of broader accountability mechanisms established for regulators. The Framework is not intended to cover the field in terms of assessment of APRA's performance. Rather, the Framework's scope is confined with a reduction of red-tape focus in mind. As APRA notes, "*The Framework seeks to improve the way regulators operate, reduce*

the costs incurred by business, individuals and the community from the administration of regulation, and to increase the public accountability and transparency of regulators.”. As noted by Treasury/Government, the Framework is designed to assess just one aspect of a regulator’s performance – namely, the extent to which the regulator minimises regulatory burden in the course of meeting the regulator’s other regulatory objectives.

11. Therefore, while we can understand why APRA would seek to leverage an existing *biennial* mechanism to inform and externally validate its *annual* self-assessment against the KPIs, the KPIs are assessed *annually* so a survey of stakeholders (including regulated entities and industry bodies) to inform and validate APRA’s self-assessment, necessarily should also be *annual* (not biennial). To do otherwise, involves a significant gap in the self-assessment model.
12. We consider that APRA should undertake an *annual* stakeholder survey (of course confined to the purposes of the Framework) to validate APRA’s self-assessment of its own performance under the the Framework (which includes an objective of reducing costs incurred by businesses and others in APRA regulation). FSC is *not* suggesting that APRA’s existing commitment to undertake a comprehensive survey every two years of APRA-regulated institutions and other stakeholders should be changed to be an annual process. Rather, we submit that *solely* for the purposes of APRA’s post-facto external validation of APRA’s *annual* self-assessment under the Framework, APRA ought to be required to *annually* survey stakeholders. The scope of the Framework survey can leverage questions APRA has designed for its broader biennial stakeholder survey (so APRA will obtain efficiencies in that regard). Further, the annual APRA survey of stakeholders that we submit should occur for the purposes of the Framework would of course be scaled down to reflect the purpose of the Framework. It is inappropriate to have an *annual* self-assessment under the Framework but a *less than annual* stakeholder survey (in externally validating the self-assessment) relating to the *annual* self-assessment.
13. APRA proposes that “*Following each review cycle, APRA must consider stakeholder feedback provided through the validation process and consider whether improvements to its metrics are necessary for the upcoming year*”. While we set out our views below in relation to the Framework seeking stakeholder comment (or validation) **after** APRA prepares its self-assessment, if the Framework nonetheless proceeds in its current form, we consider it essential for transparency and APRA accountability that APRA make public a summary of stakeholder feedback obtained by APRA through the post-facto “validation process” as well as the actions that APRA will (or will not) take in response to the stakeholder feedback. We note this is a similar approach to that adopted by APRA when APRA reports on the results of significant consultations APRA undertakes.

Stakeholder input into assessing APRA’s performance under the Framework occurs after APRA completes the self-assessment – the order should be reversed so that stakeholder input feeds into an (independent/external) assessment of APRA’s performance under the Framework

14. The Framework as currently framed is an assessment of the performance of the assessed agency by itself. That is as we understand it, it is a self-assessment finalised by APRA, then subsequently followed up by engagement with stakeholders (including industry) for comment on APRA’s self-assessment. This is in our view not a robust assessment process design (that is not to suggest APRA would not robustly seek to assess itself) because it lacks independence in that APRA is preparing its own performance review/assessment. After that, the Framework requires APRA to consult with stakeholders – while this is good it is too late. We query why the external validation of the regulator’s assessment of its performance **occurs after** the regulator has already finalised its self-assessment of its own performance. That approach is like a person preparing and finalising their own performance review and then providing it to their stakeholders after the event. To ensure a robust and strong assessment process, we think it would be better if the assessment of APRA (for the purposes of the Framework) was undertaken by an external independent party, rather than APRA.
15. In our view the way the Framework ought to work is that APRA is assessed by an independent body, perhaps the Australian National Audit Office (which we understand was suggested in another submission, and we hold the same view). The independent body would engage with APRA and stakeholders (such as APRA regulated entities) to obtain feedback as to how APRA has performed against the KPIs in terms of the Government’s policy objective evident in the Framework of reducing unnecessary regulatory burdens. The independent body could and would of course obtain APRA’s own views of APRA’s own performance and this would feed into the review of APRA by the independent body along with other stakeholder comment (e.g. regulated entities).
16. If notwithstanding our comments above the Framework proceeds with APRA finalising its own self-assessment prior to having it reviewed by stakeholders, we think that some stakeholder comment is appropriate to input into the regulator’s assessment of its performance prior to the regulator finalising the self-assessment. This is to ensure that the self-assessment can transparently and appropriately reflect the view of all stakeholders (e.g. regulated entities).

FSI and competition

17. Our members have noted that even though the Government’s response to the Financial System Inquiry is pending, the Regulatory Performance Framework may be a good opportunity to progress FSI Recommendation 30 on rebalancing the regulatory focus towards promoting competition in the system.

Current draft metrics are not sufficiently specific

18. As a general comment and acknowledging that the Framework is new and therefore the metrics may evolve over time, the APRA KPI evidence metrics currently lack specificity. That is not to say that generally the draft APRA KPI metrics are not appropriate from a subject matter/content perspective. Rather, our point is that the KPI metrics are currently insufficiently specific (as metrics) to objectively assess and measure APRA's performance under the Framework. (We note that we found ASIC's draft measures and metrics (ASIC are also subject to the Framework) much more detailed and measurable as metrics.)
19. We acknowledge that APRA states "APRA will draw on a range of data sources relevant to each metric" and that the APRA draft KPIs document "does not list in detail the range of supporting evidence that will be considered in respect of each assessment period". However, as the consultation material provided by APRA does not set out more detail on the range of supporting evidence to assess each KPI metric, it is difficult for FSC to submit on whether the proposed supporting evidence metrics is broadly an appropriate metric.
20. The evidence/metrics to support assessment of the KPIs is in broad terms not sufficiently detailed for us to assess the metrics used to assess the KPIs. In our view APRA should include additional specificity of evidence metrics so as to make it easier to objectively determine APRA's performance against the KPIs. We acknowledge that APRA notes that the draft evidence metrics it did provide for consultation are "a base" – so we assume APRA will finalise and add more evidence metrics (as appropriate) for each KPI once it has a chance to consider the matter further.

Evidence metrics should enable assessment of quality of performance (not just quantity of output or the completion of an activity)

21. As a general comment, some of the APRA metrics in the draft KPIs may not measure *relevance* or *quality* where appropriate. While some of the proposed metrics evidence an *activity* (i.e. that the *activity occurred*) they do not metric the *relevance*, the *quality* or the *timeliness* of the activity. So for example, a KPI 2 metric is that "APRA publishes up to date guidance on its framework, processes and activities on its external website". This metric reports the activity. Our suggestion is that to metric *relevance* and *quality*, APRA may enquire of stakeholders of this in the annual external validation survey (we suggest annual, not biennial).
22. We have not set out in this submission in detail, which KPI metric would need more detail to assess *relevance* and *quality*. We request that APRA consider this general comment in finalising and adding further detail to the relevant metrics in the KPIs.
23. Our members request that, where relevant, the metrics include lead indicators as well as lag indicators given that some form of pipeline metric may be appropriate. For example, a leading indicator metric may be: "APRA publishes information on its proposed supervisory activity and key areas of focus/concern over the next 12 months".

Specific comments on APRA's KPIs

24. Our specific comments on specific APRA KPIs should be read along with our *General Comments on the Framework and APRA KPIs* above. Where we do not comment on a specific KPI below, one of our General Comments above may still be relevant to the KPI and we therefore request APRA to consider our General Comments for all KPIs, in addition to our specific comments for specific KPIs below. We also suggest below some additional KPIs, or perhaps additional metrics to be included in the currently proposed KPIs.

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

25. APRA has and continues to undertake a separate consultation process in relation to reducing unnecessary regulatory burden generally (for example, APRA consultation in relation to superannuation APRA forms and data to be lodged at APRA). FSC acknowledges and welcomes this process. As a general comment though *in relation to the Framework*, we suggest that the evidence metric for the KPIs contain a metric on the additional or increased number, or alternatively reduced number, of APRA forms and APRA questions (in APRA forms for example) each year. This is not to suggest that reviewing the change in number of APRA forms or questions in isolation will be conclusive, but it gives a broad indication of whether there has been a general increase or a general reduction, each year, in the number of APRA forms (or questions) required to be lodged/answered by regulated entities. We accept that for the purposes of the Framework objectives, some *qualitative* assessment would also be required in addition to the *quantitative* assessment we suggest (of the reduction or increase in the number of APRA forms and questions).

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

26. We suggest that the KPI metric “*APRA’s Service Charter is publicly available*” be amended to provide that “*APRA’s Service Charter is publicly available and the extent of compliance with the Service Charter is published annually.*”.

Other specific comments about the KPIs

Transition periods KPI – reasonable timeframes

27. A significant, on-going and consistent concern of FSC members in relation to the implementation of regulatory reform, including refinements of regulator requirements, is the provision of insufficient transition periods. This is not to suggest that in all cases transition periods are not sufficient. In our view there should be a KPI metric which requires that APRA provide for reasonable transition periods. Including a KPI metric in relation to reasonable transition periods will drive APRA accountability in ensuring transition periods (where they are determined by APRA as opposed to Government) are reasonable.

Consultation periods KPI – reasonable consultation timeframes

28. APRA generally provides reasonable *consultation* timeframes in our view. We accept that consultation timeframes are a function of a number of matters including Government priorities and policy. We think there should be a KPI metric in relation to the provision by APRA of reasonable consultation timeframes for APRA proposals. Including a KPI metric in relation to reasonable consultation timeframes will drive APRA accountability in ensuring consultation timeframes are reasonable.

KPI Metric - APRA engagement and communication with regulated entities and industry

29. Relevant to all the KPIs broadly is APRA’s communications and engagement with regulated entities and industry bodies. This is in addition to any APRA consultations on APRA proposals. We think the KPIs broadly reflect a theme/metric of communication and engagement (for example KPI 5). We think this occurs in practice by APRA.
30. We suggest that the KPIs record a metric in relation to *regular* engagement by APRA with regulated entities and industry bodies. APRA does this currently via various means. The KPIs do not specifically record *regular* engagement with industry bodies such as FSC. While this engagement occurs in practice, we think it should also be recorded as one of the KPIs, perhaps in KPI 5 which refers to “*demonstrated engagement with regulated entities...and liaison with industry associations*”. This is important in general terms. Further the theme of *regular* engagement is particularly appropriate given that from time to time APRA will request that on some items, it is APRA’s preference that industry comments are collated and prepared by an industry body rather than having multiple regulated entities approach APRA on the same subject matter. The KPI metrics should reference *regular* engagement with regulated entities and industry bodies.

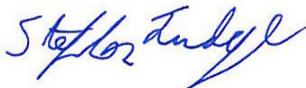
KPI metrics – managing information requests to the minimum needed to meet the prudential objective

31. FSC members report (as a longstanding concern) that some regulator information requests are duplicative and ad-hoc. Our members report that by “duplicative”, this means the same request going separately to different business units across a regulated group (with multiple regulated entities) or multiple requests for further information. Where possible, this should be streamlined by having a single request (for a collective of regulated entities within a group) and avoiding ad-hoc requests as much as possible. Sometimes this may not be feasible due to (legal) procedures, but at a minimum the matter should be managed by APRA contacting (by phone initially) the regulated group, and flagging the information request or requests which are about to be made by APRA and working with the regulated group as to the right person (within the regulated group) and most efficient way to provide the requests (subject to any legal procedural requirements).

32. APRA's approach of appointing an APRA relationship contact for regulated entities assists in managing this. We request that the APRA KPIs incorporate reporting broadly on the extent of information requests and the extent/quantity to which requests have been streamlined so that there is accountability on ensuring efficient information requests by APRA, without undermining prudential objectives. We accept that, as for our comments on the number of APRA forms above, an assessment of APRA's performance would require both a quantitative and qualitative assessment and would need to bear in mind prudential objectives.
33. Our members report that where APRA informally engages with a regulated group or regulated entity before submitting a formal information request, this is very effective in tailoring the request and ensuring multiple follow up requests are not necessary.
34. Our members seek that, where appropriate, further information be contained in APRA information requests as to what purpose the information is requested for, as this will assist the regulated entity in responding to APRA.
35. We request that APRA information requests to regulated entities have regard to existing information requests sent by APRA (where appropriate and feasible). We request APRA consider including a KPI or a KPI metric in relation to this.

Please contact Stephen Judge on (02) 9299 3022 if you have any questions on our submission. Thank you for allowing us an extension to lodge our submission.

Yours sincerely



Stephen Judge
General Counsel