



3 August 2018

Attention: Karen Chester, Deputy Chair  
Superannuation  
Productivity Commission  
Locked Bag 2, Collins St East  
Melbourne VIC 8003

## **APRA SUBMISSION TO THE PRODUCTIVITY COMMISSION DRAFT REPORT – SUPERANNUATION: ASSESSING EFFICIENCY AND COMPETITIVENESS**

APRA welcomes the Productivity Commission's (the Commission's) latest draft report, 'Superannuation: Assessing efficiency and competitiveness' (the Draft Report) and the opportunity to provide the attached submission.

The Commission has acknowledged the importance of Australia's superannuation system and the substantial value that has been, and continues to be, delivered to fund members. APRA is supportive of the focus placed by the Commission on member outcomes, which aligns closely with APRA's current strategy for the superannuation industry – to engender a mature and transparently managed industry which delivers quality outcomes for its members and is appropriately positioned for future effectiveness, resilience and viability in a competitive environment.

APRA's superannuation prudential framework is less mature, compared to the other industries that APRA regulates. It was only in 2012 that the Government's Stronger Super reforms gave APRA the power to make prudential standards applying to the superannuation industry. The industry has made substantial progress in implementing the new prudential standards over the last five years, which has translated into improved industry practices. But the progress is somewhat variable, with some trustees taking significant strides towards better practice while others have (in some cases considerable) room for improvement. Similarly, the quality of the outcomes being provided for members varies widely across the industry.

While the regulatory framework has been improved by recent legislative reforms, the continued absence of critical powers in superannuation for APRA inhibits its ability to take timely and proactive action. APRA's supervisory activities enable it to mitigate these gaps in powers to some extent, however APRA strongly supports progress of the legislation currently before Parliament, which includes<sup>1</sup>:

- a directions power, as available to APRA in other prudentially regulated industries;
- a requirement for APRA approval of material changes of ownership of trustees, similar to the requirements under the Financial Sector (Shareholdings) Act power for APRA, and provision for APRA to approve changes of ownership of trustees;

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<sup>1</sup> Refer to Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017.

- providing APRA with authority to refuse or cancel an authority to offer a MySuper product, based on broader criteria than currently provided for in the legislation, if it has reason to believe the RSE licensee may fail to comply with its obligations; and
- enhanced reporting powers enabling APRA to collect management and operational expense data on a look-through basis.

APRA's experience is that having stronger powers supports the achievement of enhanced supervision outcomes, usually without needing to resort to the use of those powers.

APRA agrees with a number of the Commission's findings and the direction of many, but not all, of the recommendations in the Draft Report. APRA's perspective on some of the areas addressed in the Draft Report are outlined below. Further information is set out in the attached submission.

### **APRAs activities relating to member outcomes**

Key areas where APRA considers that improvement in industry practices is needed are strategic and business planning, assessment of outcomes for members, and the oversight and monitoring of expenditure. Proposals aimed at strengthening prudential requirements and hence promoting improved practices in these areas were outlined in APRA's December 2017 discussion paper, '*Strengthening superannuation member outcomes*'<sup>2</sup>. These proposals align with the Commission's findings, and will be finalised over the coming months.

APRA is placing greater emphasis on how RSE licensees are delivering outcomes for members in its ongoing supervision activities for the superannuation industry. While APRA expects all RSE licensees to be assessing, and taking steps to enhance, outcomes for their members on an ongoing basis, APRA is particularly targeting funds (and products) identified as not consistently delivering quality outcomes or adequately positioned for future sustainability and resilience.<sup>3</sup> APRA's activities in this area have contributed to decisions by a number of RSE licensees to reduce fees being charged to members, reassess the design of their products, merge with another fund or exit the industry.

### **Managing implementation**

The Commission's suite of recommendations, if accepted by Government and implemented in full as proposed, will likely lead to significant changes to current industry operations and practices. As with any major regulatory reform, the implementation will need to be carefully managed.

Analysis undertaken by the Commission, and reviewed by APRA, indicates that under the proposed 'best in show' model of allocating default contributions to a shortlist of funds, the impact on existing default RSEs would be relatively limited. As the new default process will only apply to the 'first time' members those RSEs not selected for the 'best in show' list will have an opportunity to develop and implement strategies to mitigate potential impacts, including improving the delivery of outcomes to existing members and competing to be selected for subsequent 'best in show' lists.

Over the medium to long term, the impact on RSEs that are not selected for the 'best in show' list and that have been reliant on default contributions, particularly from new members, may

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<sup>2</sup> APRA Discussion Paper, Strengthening superannuation member outcomes, 13 December 2017

<sup>3</sup> APRA letter, Assessing quality member outcomes in the superannuation industry, 31 August 2017.

be more significant, including potential liquidity, cost structure and in some cases sustainability challenges. APRA does not expect these issues to lead to broader system instability, however there would be a need for APRA to work with individual RSE licensees to ensure they appropriately addressed strategic issues, including considering whether an orderly wind-up of the impacted RSE may be the most appropriate course of action.

### **APRA's role and the regulatory architecture**

APRA does not agree with the Commission's observation that APRA's powers to set prudential standards, and its role in MySuper authorisation, have resulted in regulatory arrangements that are confusing and opaque, with significant overlap with ASIC resulting in poor accountability and lack of strategic regulation.

APRA's role is to administer the prudential and retirement income provisions of the *Superannuation Industry (Supervision) Act 1993* (SIS Act), and in that context is primarily responsible for ensuring that RSE Licensees manage their business operations in a manner consistent with their member best interest obligations and the delivery of quality member outcomes. ASIC's role is to oversee specific conduct obligations applying to RSE licensees in dealing with (individual) consumers, particularly in relation to disclosure, the provision of financial product advice and access to complaints processes.

APRA accepts that there will be occasions when RSE licensee conduct may attract the attention of both APRA and ASIC, albeit from different regulatory perspectives. For example, while matters of poor conduct in the dealings of RSE licensees with individual consumers is the responsibility of ASIC, that conduct may also raise prudential concerns in relation to the operations or practices of an RSE licensee that may ultimately impact the interests of members and raise prudential concerns, and hence also fall within APRA's responsibility.

Given the nature of these distinct but complementary responsibilities, there is a clear role for both APRA and ASIC in undertaking strategic regulation and supervision of their respective responsibilities across the superannuation industry. These areas of common interest do not necessarily mean there will be duplication in regulatory activity. APRA and ASIC seek to effectively manage their activities in areas of common interest to minimise duplication of activity to the extent possible.

Communication and cooperation on matters of common interest between the two agencies, both formal and informal, is therefore critical and occurs regularly and involves numerous staff at a variety of levels. These mechanisms are in place to enable effective use of regulatory resources to achieve desired outcomes for members, and also reduce the potential for regulatory duplication for individual RSE licensees and the industry as a whole.

With this in mind, APRA and ASIC have prepared an information paper that sets out how the respective agencies undertake their responsibilities, and how they coordinate with each other in an effective manner. Ensuring stakeholders understand APRA and ASIC's respective responsibilities, and how they interact on matters of common interest, is clearly important for an effective and efficient regulatory system. The paper will be published imminently on the websites of both regulators.

Further comments on the regulatory architecture, and the roles of APRA and ASIC, are set out in the attached submission.

### **Improving the quality of superannuation data**

APRA agrees with the Commission that there is room for improvement in both the range of data that APRA collects and the quality of data that RSE licensees submit to APRA.

Incomplete, inconsistent or otherwise inaccurate data limits the ability of APRA, industry and other interested stakeholders to understand and analyse how fund assets are being used to support the delivery of sound member outcomes.

The expanded data collection resulting from Stronger Super has been in place for five years and the superannuation industry has made good progress in enhancing the quality of data provided to APRA over that period. APRA has also worked with industry to refine aspects of the reporting requirements and instructions over time, improving the quality and consistency of reporting.

APRA acknowledges, however, that there remains room for improvement in data quality, and has identified a number of areas of the collection requiring improvement. This includes providing further clarification of existing requirements that will assist in improving the quality of data collected. In particular, as outlined in APRA's December 2017 discussion paper, APRA is currently seeking to improve the quality of data reported to it on expenses, with a view to improving transparency and support effective assessment of this aspect of member outcomes. APRA is also exploring how best to capture product-level reporting. This would enhance available data to support member outcomes assessments, including investment performance and fees and costs for choice products.

The Government's proposed amendments to *Financial Sector (Collection of Data) Act 2001* to enable expense look-through is important in enabling APRA to achieve a more complete understanding of how RSEs are using member funds. This would better position APRA and other stakeholders to evaluate the delivery of outcomes and consider whether expenditure and operating costs of individual RSEs and RSE licensees are consistent with RSE licensee obligations under the SIS Act.

Finally, APRA notes that it would be happy to participate in any cross-government data working group on superannuation to improve data collection and analysis across the superannuation system.

APRA continues to support the Commission's work directed at improving outcomes to superannuation members. We are happy to answer any questions you may have in relation to this submission.

Yours sincerely,

A handwritten signature in cursive script that reads "Helen Rowell".

Helen Rowell  
Deputy Chairman