

December 2022

Effectiveness and capability review of the Australian Prudential Regulation Authority

The performance of the super system matters for the retirement wellbeing of Australians. With so much at stake, effective and active regulators are central to achieving a high quality super sector. APRA's access to data, oversight of the internal workings of super funds and regulatory powers means they are well placed to ensure funds are acting in members' best financial interests.

We welcome the Financial Regulator Assessment Authority ('FRAA') review of the effectiveness and capability of APRA's supervision and resolution functions in super. This submission will mainly focus on our assessment of APRA's supervisory functions.

In determining the effectiveness of APRA, we suggest the FRAA focus on how APRA has improved what super funds are delivering for consumers. APRA's impact on key factors like super fund performance, fees, insurance and governance are the most important outputs on a system that is hampered by consumer disengagement and complexity.

Supervision

Development of the member outcomes team

APRA's core role as a prudential regulator is well established in the banking and insurance sector¹. But its obligations in super include ensuring trustees manage the fund in a manner consistent with their member best interest obligations and the delivery of quality member outcomes.² APRA's capability review in 2019 highlighted that APRA's prudential may have led it

¹ <https://www.apra.gov.au/apras-objectives>

² APRA and ASIC, 2018, Regulation of superannuation entities by APRA and ASIC.

to under-resource its oversight of super. This is due to APRA's focus on financial system stability with large banks and insurers being the primary drivers of systemic risk meaning super took a 'back seat'.³ The capability review recommended a greater focus on member outcomes and the creation of a new super division. APRA supported this recommendation and identified performance benchmarking and data collection as priority actions.

APRA's member outcomes team and their focus on using data to compare and assess funds has significantly shifted APRA's approach to super supervision. As an example, the development of APRA's performance benchmarking heatmaps which names and identifies poor performers delivers on APRA's greater attention on underperformance and drives funds to deliver or exit the market. Since the publication of the first MySuper heatmap in 2019, 22 MySuper products, the majority of which were underperforming, have closed, merged or otherwise left the market. Over two years there was a 10% reduction in the total fees and costs charged to MySuper members.⁴ This has markedly improved outcomes for those members.

The effectiveness of APRA is likely to have been amplified by strong member focussed Government legislation being introduced at the same time. This included the Your Future, Your Super reforms and the implementation of an objective performance test with clear consequences of failure.

Super Consumers supports the development of APRA's member outcomes team and focus. It has made a welcome start. We look forward to further publications comparing the super industry. For example, an insurance in super heatmap would be a valuable addition to APRA's heatmap publication.

We would welcome a similar approach being adopted in APRA's other thematic reviews, and encourage the FRAA to examine any opportunities to imbed the member outcomes team's approach through the rest of APRA's super supervisory function.

Recommendations

That the member outcomes focus continue to be priority within APRA.

That the member outcomes team continues to use data to transparently compare and assess funds.

That the member outcomes team's approach to use data to publish, compare and assess funds be adopted by the rest of APRA's super supervision function.

³ <https://treasury.gov.au/sites/default/files/2019-07/p2019-394057-08-chapter5.pdf>

⁴ <https://www.apra.gov.au/sites/default/files/2021-12/APRA%20MySuper%20and%20Choice%20Heatmaps%20Insights%20Paper.pdf>

Improving transparency about thematic reviews

Choosing and communicating focus areas

A regulator must be selective in the issues on which it will focus. Typically, APRA has made sound judgments to identify areas of high risk that require a supervisory review.

However, the APRA process to select these priorities is opaque. We do not know if APRA consults externally to inform them. Given its member outcomes focus the regulator could benefit from consulting externally with experts, such as consumer bodies to help inform its priorities.

We also see significant opportunities for APRA to use existing data and the data it plans to collect to provide evidence for selecting new supervisory priorities. This data should be included in APRA's annual communication about its super supervision priorities.⁵

The expected timeframes for APRA's thematic reviews are also not always clearly communicated. For example, APRA's 2019, 2020 and 2021 supervision priorities detailed they would be undertaking an in-depth review of selected large trustee's management of outsourcing providers. Very little further detail was provided. Its February 2022 supervision priorities did not mention the review. It was not clear when the work would be completed and published. Eventually, in October 2022 the review's findings were published in a shorter website version.⁶

We expect regulators to be held accountable for what they say they will do. While we recognise delays will happen, APRA should keep the public well-informed on its progress.

As highlighted by CHOICE's submission to the FRAA's review of ASIC, the ACCC has a clear and effective process to select its annual compliance and enforcement priorities.⁷ It is also effective in communicating these priorities to the market. These learnings should be applied to APRA.

Recommendations

When setting supervision priorities, APRA should be required to conduct targeted consultation with experts on member outcomes.

That APRA uses data to help prioritise its supervisory focus.

⁵ See [APRA's Supervision priorities January 2022 report](#)

⁶<https://www.apra.gov.au/news-and-publications/how-super-trustees-can-improve-management-of-outsourcing-arrangements>

⁷ <https://fraa.gov.au/sites/fraa.gov.au/files/2022-08/226579-choice.pdf>

Transparency about methodology, sample, data, and effectiveness

APRA's reports on its thematic reviews lack information about the methodology undertaken, the funds reviewed or the improvements APRA has secured through its supervisory approach.

Naming funds is powerful for driving better behaviour and it is appropriate for APRA to do more of this. Commissioner Hayne stated that adequate deterrence of misconduct depends upon visible public denunciation and punishment.⁸ We understand that as a prudential regulator there is caution around 'naming names' given the challenge it may pose to the liquidity of the fund if it led to a 'run on the fund'. On the evidence this risk is overstated. For example, the performance test names underperformers in what is a clear demonstration of the fund's historical failure. Despite this, only around 10% of members left these underperforming funds in the period following the announcement. 'Consumer stickiness' due to low engagement levels is an unfortunate aspect of the super industry. However it does afford the regulator a greater degree of freedom to be transparent about the shortcomings of individual funds without creating existential risks for a fund. Although consumer engagement is constrained, super funds do appear to be responsive to how they are perceived in relation to their peers. When we undertook comparative research to highlight which funds had the most restrictive insurance policies we found them to be responsive to messaging about how they compared to other funds.⁹ The regulator can look to exert similar influence on a fund by publicly highlighting where funds are out of step with its peers.

APRA's approach to reporting on its thematic reviews is different to the approach taken by the member outcomes team. The heatmaps and related publications are transparent about the methodology and data used and will often name specific funds.

APRA's approach to thematic reviews is also different to the approach taken by other regulators conducting similar thematic reviews. We outline an example from ASIC below, comparing it to APRA's approach.

ASIC Report 675 Default insurance in super: Member value for money¹⁰

This report shares insights from ASIC's work on metrics for measuring the value for money that members receive from default insurance offered through super.

There are some key aspects of this report that Super Consumers considers as best practice. These include:

⁸ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, p433

⁹ <https://superblog.netlify.app/2021/10/28/update-on-restrictive-tpd-policies/>

¹⁰ <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-675-default-insurance-in-super-member-value-for-money/>

- Details of how information for the review was collected (public data from PDSs, APRA data and under compulsory information gathering powers)
- A detailed appendix on methodology used for the analysis
- The name of funds used in the analysis
- Detailed data on the fund policies and their cost for consumers
- The use of measures/metrics to show a key goal for ASIC in insurance: - Value for money
- The use of cameos to detail consumer harm
- Accessible version of figures

We also understand ASIC is currently conducting a follow up review to understand how trustees have responded to this and ASIC's other reviews of insurance in super. This should enable publication of concrete information about the improvements ASIC has achieved.

This transparency gives the industry and the community confidence that the regulator is taking a consistent and fair approach to its supervision. It also provides robust evidence that can be used for policy discussions.

“Findings from APRA’s super thematic reviews”¹¹

In October 2021, APRA released findings from three thematic reviews into strategic and business planning, unlisted assets and fund spending.

Fund spending is a key risk area in super, where poor behaviour can lead to demonstrably bad outcomes for members. APRA stated their approach was to use the review to share with super funds a number of risks and vulnerabilities that funds must have in front of mind to drive better practices across the industry. As part of the review APRA also engaged directly each of the trustees included in the review and directed supervisory attention to ensuring trustee-specific observations are addressed. They indicate that these trustees made good progress.

APRA's main finding was that funds lacked evidence on how their expenditure benefited members. The detailed findings of the review provided high level de-identified examples of poor behaviour (see below).

¹¹https://www.apra.gov.au/sites/default/files/2021-10/Findings%20from%20APRA%E2%80%99s%20super%20thematic%20reviews_1.pdf

Example 2.1 Sponsorship

An RSE licensee entered into a multi-year arrangement to sponsor a sporting team. No evidence was provided to indicate that a business case was considered by the Board at the commencement of the sponsorship arrangement.

The review lacked many of the features of ASIC's insurance report. APRA's review did not detail which funds were part of the sample or any specific methodology. It is not clear how they gathered information from funds. For example, did APRA rely on voluntary information provision or use information gathering powers. This invites questions about the robustness of APRA's approach and findings. The report also did not measure the harm some of the poor behaviour meant for consumers and what steps trustees took to improve. For example, 'good progress' is too general to be meaningful. The private review may have been helpful for the individual fund, but this approach makes it hard for the industry, consumers and advocates to identify specific harm and learn from it in order to drive broader improvement.

Recommendation

APRA should be more transparent about the methodology, sample and data used in its thematic reviews, as well as their effectiveness.

Introduce a state of super report

APRA produces a large number of reviews and insight papers. These include:

- Heatmaps insight paper
- Sustainability and mergers paper
- APRA insight
- APRA Annual super statistics
- APRA Quarterly super statistics
- Year in Review
- Thematic reviews

ASIC also produces targeted super reports.

A lot of the content in these reports are excellent and have the ability to spotlight specific issues. We would see value in complementing this work with a single 'connected up' state of super report.

The last significant assessment of the superannuation system as a whole was the Productivity Commission's Inquiry in 2019. This is an example of a report that had the breadth to drive

meaningful improvement in super. It has led to a performance test, stapling, comparison tool, changes in insurance and further inquiries into the sector.

There remains unfinished work from this report, including a recommendation for APRA and ASIC to jointly produce a 'state of super' report every two years on the performance of the super system.¹² This report was intended to include outcomes relating to investment performance, fees, low-balance inactive accounts, merger activity and the elevated MySuper and choice outcomes tests.

A similar type of report occurs in other markets like telecommunications. The Australian Competition and Consumer Commission (ACCC) is required to report annually on competition in the Australian telecommunications sector and price changes for telecommunications services in Australia.¹³ It includes an overview of key market developments, observations on competition within the sector, identifies trends and emerging issues and examines the factors impacting on the communications sector in general. It also assesses the changes in the prices paid by consumers for telecommunications services and examines competitive safeguards.

Super Consumers see significant benefit in a regular consolidated report provided by APRA and ASIC in super. Such a report would provide a 'connected up' and contextualised evidence base of what is working and give a clearer understanding of areas for improvement. APRA could report on the efficacy of its levers, such as the member outcome assessments, performance test, heatmaps and its other general supervision activities in improving member outcomes. ASIC could report on measures that sit outside of APRA's remit such as conduct regulation. The ATO could feed in data it holds in areas like the consolidation of super accounts and efficacy of the comparison tool in helping people find appropriate superannuation options.

A state of super report could also show how the regulators are performing on key consumer outcome metrics. This would help ensure all regulators are pulling in the same direction and hold them accountable to member outcomes. It could also provide ASIC and APRA another mechanism to explain what they see as the major problems in super, which ones they feel can be addressed with existing regulatory tools and which may require additional attention from policy makers.

Suggested consumer outcome metrics include:

- Reduction in the number of new and existing unintended multiple accounts,
- Member weighted median fee levels and distribution,
- Member weighted median performance compared across like for like investments,
- Insurance metrics - (e.g. claims acceptance, claims timeframes, average cost per \$1,000 of cover by insurance type),

¹² Productivity Commission Inquiry report - super: Assessing Efficiency and Competitiveness, p77

¹³<https://www.accc.gov.au/publications/accc-telecommunications-report/accc-communications-market-report-2020-21>

- Retirement outcomes (e.g. degree of financial stress among retirees and degree to which superannuation savings, support and guidance are assisting people to maintain living standards between working life and retirement)
- APRA's heatmap sustainability metrics.

Recommendation

That a 'State of super' report be regularly produced to review the effectiveness of the superannuation system in delivering on member outcomes.

Prioritise data collection and publication

Timely and accurate data across the entire super market is crucial for effective supervision. As APRA has acknowledged, quality data serves as an early warning system. This allows them to identify prudential risks and intervene early to prevent harm or, where appropriate, manage the orderly exit of a failing fund.

In 2016-17 the Government provided APRA \$9.7 million over three years to modernise its data collection and dissemination systems. It also provided APRA \$11.2 million over four years to support the maintenance operation of the new systems.¹⁴ This has resulted in APRA's super data transformation project.

Super Consumers Australia supports this project and the original funding provided to APRA to prioritise data collection. Understanding that there are complexities with building a wide-reaching and comprehensive data system, the implementation of the project has been delayed at various times. There have also been further delays to the proposed publication of data, including twice this year.¹⁵ This means consumers continue to be left without an early warning system and granular data in key areas, such as insurance, costs and expenses, and choice products.

The data transformation project is one of APRA's most important tools to drive and measure improvements in member outcomes. There is still a significant amount of work until it is finalised. We recommend the FRAA acknowledge the importance of this project and review what limitations have led to these delays and what would have assisted to avoid them.

Recommendation

Continued funding and prioritisation be directed to APRA's super data project

¹⁴ https://archive.budget.gov.au/2016-17/bp2/BP2_consolidated.pdf

¹⁵ https://www.apra.gov.au/sites/default/files/2022-07/Response%20paper%20-%20Superannuation%20Data%20Transformation%20Publications%20and%20Confidentiality_0.pdf and https://www.apra.gov.au/sites/default/files/2022-11/Discussion%20paper%20-%20Superannuation%20Data%20Transformation%20Project%20Minor%20Amendments_1.pdf

Market wide and stakeholder communications

APRA's relationship with SCA

Super Consumers Australia is part of a biannual liaison meeting with APRA and ASIC to discuss current issues in the super sector. This provides an effective mechanism for APRA to communicate their priorities to us. Conducting the meeting jointly with ASIC also helps ensure effective coordination between the regulators on issues that Super Consumers are prioritising. We also use this meeting to ensure both regulators continue to think about the consumer in their regulatory work.

This is an important part of the communication framework that we recommend continue.

Sending clear messages

APRA plays a supervisory role when it sends clear messages to industry about the behaviours it expects of funds. We have noticed that in some of the public statements made about licence conditions that easy to understand details about what went wrong, what the consumer harm was and what the funds must do to improve is not communicated to consumers, industry and interested parties. Typically, these public statements are brief and do not give any practical insight to APRA's work or the fund's behaviour. This limits APRA's supervisory impact and public understanding of issues in super.

APRA's media statement about imposing licence conditions on IOOF¹⁶

In November 2022, APRA imposed additional licence conditions on IOOF. In APRA's media release it stated that IOOF breached its obligation to undertake a timely transfer of member benefits to other funds. A footnote to this statement detailed this was in relation to a section 6.34 and 6.34A of the SIS regulations. This regulation deals with timeframes for rollovers and so we assume there were consumers affected by this failure.

The terms of the conditions IOOF must follow included to:

- enhance their governance in relation to member outcomes, oversight of service providers, risk, compliance and managing conflicts of interest;
- appoint an independent expert to examine the operational effectiveness of their governance, accountability and risk management frameworks and practices; and
- rectify areas of concern with input from the independent expert.

Super Consumers welcomes the action taken by APRA. However, the public statement lacked details and language that would have made it easy to understand what went wrong, what was

¹⁶<https://www.apra.gov.au/news-and-publications/apra-applies-additional-licence-conditions-on-insignia-financial-ltd-trustees>

the harm and what the fund practically must do to improve. It also is not clear if any 'rectification' includes remedial action for affected consumers.

These details can be very important in setting expectations on the wider industry. In our role as a consumer advocate, we play an important role talking to the media and consumers about these breaches in the law and regulations. Yet in this example we lacked the detail to provide this to help explain the issues and communicate wider learnings to the super sector. Practically, this may mean we can't help advise consumers about any compensation they were entitled to and how to access this by making a complaint. In addition, we were aware of other funds experiencing delays with rollover processes but could not verify if IOOF's failures involved the same issues.

Being more specific in public messaging will have a wider supervisory impact. If APRA were to detail the behaviours it will send a message to other funds who are at risk of repeating the same mistakes.

By contrast, when ASIC took action against Statewide super for misleading or deceptive conduct, it provided a media release which detailed the specifics of the consumers affected and the potential cost of the poor behaviour.¹⁷ We recommend APRA take a similar approach.

Recommendation

APRA increase transparency in their communications about licence conditions and other 'formal' enforcement actions

¹⁷<https://asic.gov.au/about-asic/news-centre/find-a-media-release/2021-releases/21-037mr-asic-commenc-es-civil-penalty-proceedings-against-statewide-super-for-misleading-or-deceptive-correspondence/>