

23 April, 2019

APRA Capability Review Consultation
Treasury
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RE: APRA Capability Review

APRA has the opportunity to more effectively deliver on its mandate in three ways.

First, by increasing the data it captures and releases about the financial system. If this data is released in a machine-readable format it can be used by third parties to develop tools that will directly help people navigate the financial products, increasing competition.

Second, the Federal Government should update APRA's mandate to specifically recognise that its work aims to enhance the welfare of Australians.

Finally, APRA can better fulfill its statutory mandate by deepening connections with consumer groups. Consumer groups regularly meet with other regulators to identify issues in markets and share information about market operations. Both consumer groups and APRA would benefit from more frequent, formal contact through a consumer advisory panel.

Increasing the transparency of residential home-loan pricing

APRA has an important role in ensuring that the residential home-loan market is competitive and working for borrowers, not just the banks. This aligns with APRA's mandate to, 'protect the interests of depositors in authorised deposit-taking institutions in ways that are consistent with the continued development of a viable, competitive and innovative banking industry'.

Pricing in the residential mortgage market is opaque. This makes switching and shopping around for the best price unnecessarily challenging. The Productivity Commission concluded that the:

*"absence of a genuine real-time benchmark against which to judge the deal offered to you by a bank branch or a mortgage broker is characteristic of a flawed market."*¹

The ACCC's recent review into residential mortgage pricing supported this, finding that banks rely on opaque discounting practices that lack transparency.² This makes it both difficult and costly for borrowers to shop around for a cheaper priced home-loan.

¹ Productivity Commission, 2018, 'Competition in the Australian Financial System' p.356

² ACCC, 2018, 'Residential mortgage price inquiry - Final report', p.7

APRA should implement the Productivity Commission's recommendation to 'continuously collect data from mortgage lenders on interest rates of new residential home loans by borrower and loan characteristic'.³ This data should be made available for third parties to use to create tools for consumers or conduct research. In addition, ASIC should develop an online calculator that reports on median interest rates, ideally pulling data as close to real time as possible but with an elapsed time of no more than 6 weeks, and should vary according to different combinations of loan and borrower characteristics. An effective online calculator will help minimise the anti-competitive impacts of opaque discretionary pricing, and will assist people in shopping around for the loan that best suits their needs.

Recommendation 1: That APRA continuously collect data from mortgage lenders on interest rates of new residential home loans by borrower and loan characteristics.

Recommendation 2: That APRA publicly release this data in a machine readable format for use by third parties.

Recommendation 3: That APRA work with ASIC to develop an online calculator to report on this data.

Update APRA's mandate to include enhancing the welfare of Australians

The terms of reference for the Capability Review include an evaluation of whether APRA has fit-for-purpose statutory powers. This requires a consideration of whether APRA's mandate is adequately articulated in legislation.

At the Financial Services Royal Commission, the Chairperson of APRA, Wayne Byres acknowledged that:

"Both prudential and conduct regulation have the ultimate objective of protecting the community and promoting economic well-being for society address different risks to that objective."⁴

On APRA's website, the regulator states that "our mandate is to protect the Australian community".⁵ However, there is no legislated mandate to support this.

In comparison, other Australian regulators have specific legal mandates to protect the community. For example, the ACCC has a mandate to "enhance the welfare of Australians."⁶ The ACCC was often held up during the debate around the Financial Services Royal Commission as an exemplar regulator in terms

³ Productivity Commission, 2018, 'Recommendation 12.1: Competition in the Australian Financial System' p.44

⁴ Financial Services Royal Commission, 2018, 'Exhibit 7.145 - Witness statement of Wayne Stephen Byres', p.9

⁵ APRA, 2019, 'APRA's mandate, vision and values', available at:

<https://www.apra.gov.au/apras-madate-visions-and-values>

⁶ *Competition and Consumer Act 2010*, section 2

of championing the interests of consumers in the way it regulates markets. This is in no small part due to its clear mandate to act in the long term interests of consumers and to enhance the welfare of Australians.

The Australian Government should amend APRA's mandate to explicitly include "enhancing the welfare of Australians". Explicitly enshrining this in ARPA's mandate will ensure that the regulator's decision are focused on promoting the long-term interests of Australians.

Recommendation 4: That the Federal Government legislate to give APRA a specific mandate to work in the long term interests of consumers and to enhance the welfare of Australians.

Accountability to and engagement with consumers

ASIC, the Productivity Commission and Royal Commission have made recent findings highlighting the role consumer organisations play in identifying and escalating issues in the financial services market.

- In ASIC's submission to the Productivity Commission it stated that a: *"consumer organisation in the superannuation sector will assist ASIC, and other regulators, to more effectively assess and prioritise issues impacting superannuation members"*⁷
- The Productivity Commission Inquiry into Superannuation found consumer organisations should be included in extensive consultation process in upcoming regulatory work of APRA, for example the proposed joint regulator taskforce to bolster, monitor and improve compliance with the Life Insurance in Superannuation Code of Practice.⁸
- Commissioner Hayne in the Financial Services Royal Commission found that consumer advocates have been important in: *"bringing issues to the attention of the regulator or providing a balancing consumer voice in policy development."*⁹

Commissioner Hayne made special mention of the value of ASIC's Consumer Advisory Panel in assisting the regulator.¹⁰ As participants in both ASIC's Consumer Advisory Panel and the ACCC's Consumer Consultative Committee, CHOICE has had first hand experience of the value of these bodies to both consumer groups and regulators. As we've outlined above, markets should be regulated ultimately to improve the long term welfare of Australians. Regulators should create regular opportunities to hear from consumer groups about the concerns impacting people as they interact with financial services markets. The importance of these forums extend beyond people's experience of conduct within markets and often extend to overarching policy and regulatory approaches to improving markets.

⁷ ASIC, 2018, 'Submission by ASIC to the Superannuation: Assessing Efficiency and Competitiveness - Productivity Commission Draft Report', p.25

⁸ Productivity Commission, 2018, 'Superannuation Assessing efficiency and competitiveness', p.410

⁹ Financial Services Royal Commission, 2018, 'Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry', p.492

¹⁰ Financial Services Royal Commission, 2018, 'Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry', p.492

Given APRA's expanded role in the regulation of superannuation funds via the powers it has been granted by the 'Member Outcomes' legislation it is even more important that APRA engage with consumer representatives in a more thorough way. Under these new powers the role of APRA will become far more normative, requiring relative value judgements if it is to properly regulate poor performing funds. Assessing the quality of a financial product and the outcomes it will deliver consumers in this way is not a function APRA has traditionally seen as part of its prudential function. Absent a strong consumer voice and a forum to hear that voice the regulator will likely struggle to navigate these kinds of value judgements and will miss out on opportunities to identify issues consumer groups see directly.

The stakes could not be higher if APRA is unable to make the most of its new powers. The Productivity Commission findings on relative fund performance show the damage that can be done to a person's retirement savings if poor performing funds are not removed from the market. In the default MySuper segment a person ending up in a bottom quartile performing fund could be \$502,000 worse off compared to a top quartile fund by the time they retire.¹¹ Superannuation funds will have ample opportunity to defend the outcomes they are delivering to members via their annual assessments. It is important that APRA balance these views and understand how consumer representatives prioritise the different outcomes funds have delivered. This can best be achieved through a regular forum between consumer organisations and the regulator.

Recommendation 5: That APRA establish a consumer advisory panel to advise on the impact on consumers of regulatory action, to identify issues in markets and share information about market operations.

Yours sincerely,



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¹¹ Productivity Commission, 2018, 'Superannuation Assessing efficiency and competitiveness', p.13