

CORPORATE SUPER ASSOCIATION

ABN 467 615 800 25

Suite 6, Level 6, 470 Collins Street,
Melbourne, VIC 3000
Tel: 03 9620 5155 Fax: 03 9620 5122
Email: corsuper@netspace.net.au
Website: www.corsuper.com.au

Manager, Superannuation Statistics
Australian Prudential Regulation Authority
GPO Box 9836
Sydney NSW 2001

Email: superstats@apra.gov.au

Dear Sir

ENHANCED APRA SUPERANNUATION STATISTICS COLLECTIONS

Thank you for inviting comments from the Corporate Superannuation Association about the above Discussion Paper issued in May 2009 (the May 2009 Paper).

Our Association supports the provision of information to APRA that is appropriate and adequate to enable APRA to perform its regulatory function efficiently.

However, we have serious concerns about aspects of the current proposals:

- to the extent that they would require data to be collected for purposes far beyond the prudential regulatory role occupied by APRA, purposes which do not necessarily serve the public interest efficiently; and
- to the extent that the proposed additional data is collected to assist APRA in its prudential regulatory role, but involves detail far in excess of that required to fulfil that role efficiently. The collection costs will increase considerably, both for regulator and for funds. All these costs fall on funds either directly or through levies. These increased costs of collection and regulation reduce superannuation savings, and may not be in the best interests of members.

APRA's role

The role of APRA is that of a prudential regulator. In relation to superannuation funds, under the Superannuation Industry (Supervision) Act (SIS Act), the role involves monitoring and supervising the management and trusteeship of funds. The role involves ensuring that the funds are financially stable and that the interests of members are well served by the trustees. The Australian Prudential Regulation Authority Act (APRA Act) states (at section 8) that APRA has been established for the following purposes:

- (1) APRA exists for the following purposes:
 - (a) regulating bodies in the financial sector in accordance with other laws of the Commonwealth that provide for prudential regulation or for retirement income standards;
 - (b) administering the financial claims schemes provided for in the *Banking Act 1959* and the *Insurance Act 1973*;
 - (c) developing the administrative practices and procedures to be applied in performing that regulatory role and administration.
- (2) In performing and exercising its functions and powers, APRA is to

balance the objectives of financial safety and efficiency, competition, contestability and competitive neutrality and, in balancing these objectives, is to promote financial system stability in Australia.

Under the APRA Act, the responsible Minister may require further functions to be performed by APRA.

The collection of data is now authorised under separate legislation to assist the performance of APRA's functions under the APRA Act. The Financial Sector (Collection of Data) Act 2001 has as its object (section 3(1)):

to enable the collection by the Australian Prudential Regulation Authority (*APRA*) of information to assist it in the prudential regulation or monitoring of bodies in the financial sector and to facilitate the formulation by the Reserve Bank of monetary policy

Use of APRA's authority

We are concerned that APRA's powers are being over-extended. We believe that this trend has been encouraged by a request from the then Minister for Superannuation and Corporate Law, as indicated in APRA's Discussion Paper of November 2008, *Fund level disclosure from the APRA superannuation statistics collections* (the November 2008 Paper). The former Minister, Senator Nick Sherry, had requested that APRA consider how it might publish performance data which is disaggregated to the individual fund level. APRA then concluded that "there would be benefit in expanding our publications to include data on individual fund performance, while further investigating options for performance measures at the investment option level" (page 3 of the November 2008 Paper).

In our view, the proposed actions of APRA, both in relation to the publication of fund level data from existing statistics, and in relation to the collection of significant additional data as proposed in the May 2009 Paper, are a huge overreaction to a request for a compilation of data to assist evaluation of fund performance. The extent of the proposed data collection and its proposed uses exceed the appropriate actions for APRA in exercising its regulatory function.

We have the following detailed areas of concern.

Use of data in a context alien to APRA's regulatory area

The issue of the appropriateness of the publication of fund level data was raised in our letter to APRA of 12 June 2009. In brief, we are concerned about the use of data collected for regulatory purposes as a tool to enable consumers to evaluate fund performance. The data collated by the regulator would be used out of context and in a format not readily adapted to easy understanding by the consumer. The issue of publication of fund data including fee and performance information appears to us to be the province of ASIC, not of APRA, and should follow recommendations arising from ASIC's research and consultation which has been informed by an appropriate user focus. It may be that data held by APRA can assist ASIC in their approach to consumer communication but the issue of the statistics should be consistent with ASIC's approach.

A simple approach that could be adopted would be to require funds to lodge annual reports and PDS with ASIC. The information could be classified by type of fund and available electronically via ASIC's web site. This would facilitate collation by interested parties (at their own cost).

Collation of data out of its context

We are concerned that data presented outside the context of other accompanying figures and explanatory notes can be misinterpreted, misused, and collated with other data which comes from a different circumstance and context and is not immediately comparable. This is not helpful and may be misleading to the user.

Use of data which is provided to the Regulator in confidence

This is a very serious issue which arises particularly in relation to the proposed collection of additional statistical data. The publication of in depth information in particular about services provided to funds and their costs is particularly sensitive. If the source and costs of services provided to funds are made public, this can lead to cartel behaviour and other non-competitive outcomes. There is a reason for the secrecy provisions at sections 56 and 57 of the APRA Act and we regard the current proposals as against the intent of these provisions. We do not regard the consultation with the funds that has taken place as being sufficient to meet the consent requirements in the legislation. We do not consider that the Ministerial request referred to above should have provoked such an extreme reaction. Information that has been provided to APRA as an institutional level regulator, on an in confidence basis, should not be published on a wholesale and irresponsible basis in a form open to abuse by media and by marketing organisations and in a form not easily understood by consumers.

Costs and benefits of the proposals

Potential benefits

We have seen little analysis of the potential benefits arising from the proposed collection of additional data. The proposal is to seek a large amount of additional detailed data and to extend the requirements to funds of smaller asset value. In addition there is a proposal to extend quarterly reporting to a depth comparable with the annual requirement.

The practicality alone of collecting the data within the proposed time line, particularly in relation to the quarterly data, poses real problems. In many cases the aggregation of the required data from the various investment sources is simply not practicable within the required time line. We discuss costs below.

We acknowledge that funds and their investments are becoming more complex but we would like to see detailed justification for the collection of each additional item of information in terms of APRA's role in prudential regulation. We would like to be assured that there would be a significant additional benefit in safety and stability for the sector as a whole before such a wide extension of data collection was undertaken.

It is our belief that there is a level of data collection that is of assistance to the Regulator. Data in greater detail may even hamper the regulator's role by obfuscating real issues under the mass of data.

Costs

If the proposals are implemented, the collection costs will increase considerably, both for regulator and for funds, and all these costs fall on funds either directly or through levies. These increased costs of collection and regulation are a direct burden on the persons for whom the trustees are acting and must be subject to very careful scrutiny and justification in terms of benefit for those persons.

Specific areas of data collection

We note the 3 questions raised on page 8 of the Paper. We have specific comments on question 1. On questions 2 and 3, we have the general comment only that it is hoped that existing data collection will be sufficient for regulatory purposes and that the costs and benefits of the collection of investment performance and costs information will need to be justified in terms of costs and benefits to members, as discussed above.

1 Data to improve understanding of the structure of funds

We understand APRA's concern with understanding how separate sub-funds participate in the assets and liabilities of the fund as a whole. We suggest however that it may be sufficient to require data currently being reported in aggregate to be provided separately for each sub-fund that has clearly separate liability structure.

We believe that the proposed additional data should be required for regulatory purposes only if the fund is identified under APRA's risk analysis for more in-depth investigation. We understand that the risk analysis tools used by the regulator should reduce rather than increase the amount of data sought, if appropriately collected and analysed.

Conclusion

Although transparency is a worthy goal it must be assessed both by end user benefit and by potential detriment to institutions. We are most concerned that the proposals in the May 2009 Paper suggest that APRA has forgotten its prime regulatory focus. We believe that data collection should be for the purposes of ensuring that funds are financially sound and run in the interests of their members. We believe the publication of data which should remain confidential will be potentially damaging to funds and hence to their members. We believe that much of the proposed data collection is directed to misguided ends outside the province of APRA's responsibilities. The collection of the additional data will be very expensive for fund members and they may then have to fund the regulator's collation of that data for inappropriate ends. This is contrary to the public interest.

In the event that the public offer or retail sector consider that the proposed approach is in their members' interests, we in the corporate not for profit sector would wish to be excluded. The proposals are not in the interests of our members.

Yours faithfully



Bruce McBain
Chief Executive Officer
Corporate Superannuation Association