



Law Council  
OF AUSTRALIA

*Legal Practice Section*

2 March 2020

Senior Adviser  
Retirement Income Policy Division  
Treasury  
Langton Cres  
PARKES ACT 2600

By email: [FSRCconsultations@treasury.gov.au](mailto:FSRCconsultations@treasury.gov.au)

Dear Sir/Madam

### **Financial Regulator Assessment Authority**

1. The Superannuation Committee (**the Committee**)<sup>1</sup> of the Law Council of Australia's Legal Practice Section welcomes the opportunity to make a submission to Treasury on the Exposure draft Bill and consequential amendments *Financial Regulator Assessment Authority Bill 2020 and Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2020 Measures)) Bill 2020: FSRC rec 6.14 (Financial Regulator Assessment Authority)*.
2. Superannuation funds are typically regulated by Australian Prudential Regulation Authority (**APRA**) and those that have an Australian Financial Services (**AFS**) licence already experience dual regulation. The Committee notes that the proposed measures for the establishment of the Financial Regulator Assessment Authority is broadly consistent with the Financial Services Royal Commission (**FSRC**) recommendations to have the effectiveness and capability of Australian Securities & Investment Commission (**ASIC**) and APRA regularly reviewed and reported upon.
3. The Committee does not make any substantive submissions in relation to the proposed Bill but makes the following suggestions to improve clarity.
4. The Committee suggests that in relation to the definitions in section 5 of the Bill:
  - (i) in paragraph (b) of the definition of 'APRA executive' the words: 'that subsection', be replaced by the words: 'subsection 3(1) of the *Australian Prudential Regulation Authority Act 1998*' or the definition be recast;
  - (ii) in paragraph (a) of the definition of 'ASIC executive' the reference to 'member of ASIC' be amended to make express reference to

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<sup>1</sup> The Law Council of Australia is a peak national representative body of the Australian legal profession. It represents the Australian legal profession on national and international issues, on federal law and the operation of federal courts and tribunals. The Law Council represents 60,000 Australian lawyers through state and territory bar associations and law societies, as well as Law Firms Australia.

subsection 5(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) or the definition be recast; and

- (iii) in paragraph (b) of the definition of 'ASIC executive' the prescription for 'staff members' to be determined by the 'rules' be removed so that the ASIC executive includes all 'staff members' of ASIC and is not dependent upon the Minister prescribing positions and duties pursuant to rules made under section 50.
5. The Committee suggests subsection 20(5) of the Bill be revised such that the definition of 'APRA executive' replaces paragraphs (b) and (c) and the definition of 'ASIC executive' replaces paragraphs (e) and (f). Alternatively, if the different language adopted by the definitions and subsection 20(5) is deliberate, then specific reference to this should be made in the explanatory memorandum with reasons given.
6. The Committee suggests that in relation to section 13 of the Bill:
- (i) consideration be given to extending each of paragraph 13(1)(g) and paragraph 13(2)(f) respectively to also include 'APRA executive' and 'ASIC executive'; and
  - (ii) consideration be given to extending each of paragraph 13(1)(f) and paragraph 13(2)(e) to include the 'performance' of APRA executives and ASIC executives respectively or otherwise providing for the report to cover specifically the assessment of staff performance (noting that the Financial Services Royal Commission (page 477) noted the requirement for the oversight body to assess the 'performance of the leaders and decision-makers within the regulator').
7. The Committee also queries whether:
- (i) there should be further clarity specified around the power given to the Authority to, in effect, outsource its role with respect to 'capability reviews' under subsection 12(3) and what power, authority, protections and obligations 'someone else' would then have in conducting investigations and reporting to the Minister;
  - (ii) a particular date or period should be specified where reference is twice made to 'starting in 2021' in section 14; in its present form the provision would appear to allow the assessment to commence on 31 December 2021 and there is no requirement as to timing for the report to be given to the Minister; and
  - (iii) a definition of 'SES employee' is required because that term is used in the Bill (for example, subsections 23(2), 47(1), 48(2) and 49(1)).

8. The Law Council would welcome the opportunity to discuss this submission with the Department. In the first instance, please contact the Superannuation Committee Chair, Dr Lisa Butler Beatty on BeattyLi@cba.com.au.

Yours sincerely

*Margery Nicoll.*

**Margery Nicoll**  
**Acting Chief Executive Officer**