



Scope of assessment of the Australian Securities and Investments Commission

The Financial Regulator Assessment Authority (FRAA) was established in response to recommendations 6.13 and 6.14 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. These recommendations were to conduct regular capability reviews of the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA) and create an oversight authority for ASIC and APRA to regularly assess each regulator's effectiveness.

The Financial Services Royal Commission highlighted that while both APRA and ASIC were already subject to a range of external assessment, review and oversight mechanisms, the regulators' effectiveness in delivering on their mandates was not subject to consistent and independent expert reviews over time.

The FRAA's statutory mandate requires it to assess and report on the effectiveness and capability of ASIC and APRA on a biennial basis, with reports to be delivered to the Minister and subsequently tabled in Parliament. It can also prepare ad-hoc reports on matters related to ASIC and APRA's effectiveness and capability at the request of the relevant Government Minister. The FRAA is composed of three part-time members appointed by the Minister, supported by a Secretariat of Treasury staff. The inaugural members of the FRAA are Mr Nicholas Moore (Chair), Mr Craig Drummond, and Ms Gina Cass-Gottlieb.

The FRAA's activities are designed to complement and augment the existing external accountability mechanisms that apply to the regulators, not to duplicate them. Its reports will inform and improve the performance of other accountability mechanisms, such as Parliamentary committees, and will also allow for comparison of regulators against their domestic and international peers where practicable.

In recent years, both ASIC and APRA have been subject to broad-ranging capability reviews convened on an ad-hoc basis. The FRAA's permanent presence and biennial reviews will facilitate a more focused approach to assessments and reviews. Each FRAA review will assess a specific set of functions and operations of a regulator, with the breadth of the regulators' activity to be assessed across a number of consecutive reviews. Given the breadth of ASIC and APRA's operations, this approach will enable the FRAA to undertake meaningful assessments of each regulatory function and provide sufficient opportunities for the regulators to take action to address findings from the FRAA reviews.

The FRAA will undertake its assessments in consultation with ASIC and APRA to ensure that the FRAA's assessments address the challenges faced by the regulators at the time they are conducted. The FRAA's approach will also be evidence-based and informed by consultation with a broad range of stakeholders. The FRAA's approach to each assessment is also intended to be replicable and consistent across assessments.

The FRAA's assessment of effectiveness and capability will be guided by the statutory objectives and responsibilities of the regulators, the Government's Statement of Expectations, and the regulators'

Statement of Intent.

Focus of the first ASIC assessment

On 10 September 2021 the Treasurer announced that in its first year the FRAA will assess the effectiveness and capability of ASIC so as to assist the recently appointed ASIC Chair, Joseph Longo, in ensuring ASIC is operating effectively and consistently with the Government's Statement of Expectations.

Consistent with the FRAA's approach outlined above, this review will be a targeted assessment of ASIC's effectiveness and capability in strategic prioritisation, planning and decision-making, ASIC's surveillance function, and ASIC's licensing function.

The effectiveness of ASIC's ability to set and execute its strategic priorities and make decisions is at the core of its overall effectiveness and is a prerequisite to informed assessment of ASIC's other activities.

Alongside this, the FRAA will assess the effectiveness of ASIC's surveillance function, which is a critical and significant component of ASIC's regulatory activities.

Finally, the review will assess ASIC's licensing function as it is the entry point into the financial system and central to ASIC's efforts to achieving the aims of the Government's Statement of Expectations for ASIC.

As well as broadly assessing effectiveness and capability, the FRAA will also be examining ASIC's use of data and technology in each area of focus for the first assessment.

Further detail about the scope for the areas of focus for the first assessment, along with key questions that will be used to refine the scope of the assessment, are set out below.

Scope of areas of focus, and assessment questions

Strategic prioritisation, planning and decision making

ASIC's strategic prioritisation, planning and decision-making is the cornerstone of its overall effectiveness and capability. This focus area will inform other components of the first assessment of ASIC, and subsequent assessments focussing on other areas of ASIC's work.

The assessment will also examine the consistency of decision-making within ASIC, its alignment with articulated priorities, as well as whether the strategic prioritisation process is sufficiently responsive to risks identified by ASIC.

The scope of this area of focus includes statutory (i.e. regulatory) decisions, strategic decisions, and decisions relating to ASIC organisational management (i.e. implementation of strategic priorities and allocation of resources).

In accordance with its statutory mandate, the FRAA will assess decision-making in ASIC in terms of overall ASIC governance and process, and will not assess decisions made in relation to particular cases or specific regulatory matters.

Assessment of the effectiveness and capability of ASIC's strategic prioritisation, planning and decision making

Key questions

1. Does ASIC have a clear and effective framework for setting strategic priorities and making decisions consistent with those strategic priorities?
2. How effective is ASIC's process for identifying risks, and addressing these risks through its strategic prioritisation and decision-making? How effectively is data and technology utilised to inform these processes?
3. How effective is ASIC in implementing its strategic priorities and decisions, and allocating resources to give effect to them?
4. Are there processes and systems in place to effectively monitor and oversee ASIC's decision-making to ensure decisions give effect to the direction and strategic priorities set by ASIC? Do these processes and systems result in appropriate consistency of decision-making across all levels of ASIC decision makers?
5. Is ASIC's strategic prioritisation and decision-making framework clearly communicated to and understood by ASIC staff and external stakeholders?

Surveillance

Surveillance of regulated entities and markets is a critical regulatory activity for ASIC, involving a large proportion of ASIC's workforce.

Surveillance at ASIC refers to the monitoring of markets and regulated entities, ASIC's targeted surveillances of individual firms, and ASIC's targeted surveillances of larger groups of entities or products (sometimes described as thematic assessments).

In addition to assessing the effectiveness of ASIC's surveillance activities as a whole, the FRAA will consider the capability of ASIC's surveillance function with a particular focus on its use of data and technology to effectively achieve its mandate in the most efficient manner possible.

Assessment of the effectiveness and capability of ASIC's surveillance function

Key questions

1. How does ASIC make decisions about the prioritisation and resourcing of surveillance activities?
2. To what extent are ASIC's surveillances targeted, efficient, and proportionate? Are those surveillances effective?
3. To what extent does ASIC have the appropriate data, technology, and systems to allow it to detect risk, harm and misconduct, prioritise issues, and conduct surveillances?
4. How effectively does ASIC use data and technology to reduce the regulatory impost of its surveillance activities?
5. Has ASIC appropriately prioritised investment and focus on enhancing its data and technology capabilities in its surveillance activities?

Licensing

This area of focus will assess ASIC's receipt, processing, and granting of licenses and registrations for regulated entities and individuals. ASIC's licensing function governs entry into the financial system and is an important element of ASIC's regulatory toolkit to ensure financial service providers are compliant with legislative obligations, and that competition and innovation are supported in accordance with ASIC's statutory mandate. In addition, the FRAA will examine ASIC's communication and interaction with applicants.

For the avoidance of doubt, enforcement actions related to licences and registrations, such as variations or cancellation of licences and registrations, and the imposition of conditions on licences and registrations, are not included in this area of focus but will be examined by the FRAA in the future when examining ASIC's enforcement function.

Assessment of the effectiveness and capability of ASIC's licensing function

Key questions

1. How does ASIC's licensing function support its regulatory mandate i.e. ASIC's statutory objectives, legislative requirements, risk appetite and strategic priorities?
2. Are licensing and registry application decisions timely and consistent? Does ASIC ensure that clear guidance for applicants is made available and that stakeholders are engaged appropriately?
3. Does ASIC have the appropriate data, technology, and systems to efficiently manage licensing and registrations?
4. How effectively does ASIC use data and technology to reduce the regulatory impost of its licensing activities?

Call for submissions

Interested parties are invited to provide written submissions in response to the questions posed above.

Submissions may be informed by direct experience, but should reflect on ASIC's effectiveness and capability as set out in the questions, rather than the outcomes of individual matters. The FRAA does not have a role in considering complaints, nor does its role involve assessing or reporting on single cases.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please submit responses sent via email in a Word or RTF format. An additional PDF version may also be submitted. Please limit your submission to 20 pages or less. Where possible please support submissions with evidence such as data or case studies.

All information (including name and address details) contained in submissions will be shared with ASIC and made available to the public on the Treasury website unless you indicate that you would like all or part of your submission to remain confidential. Automatically generated confidentiality statements in emails are not sufficient for this purpose. If you would like only part of your submission to remain confidential, please provide this information clearly marked as such in a separate attachment.

Closing date for submissions: 28 January 2022

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