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Review of the Australian Prudential Regulation Authority Annual Report 2019

House of Representatives
Standing Committee on Economics

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Chair's foreword

The Royal Commission found that Australia's financial sector suffered from a lack of moral leadership and a corporate culture motivated by greed. Evidence provided to the Royal Commission exposed shocking and widespread examples of misconduct and highlighted systemic failings throughout the banking and financial services sector. Revelations of further misconduct have continued to come to light, following the conclusion of the Royal Commission.

The public expects and deserves better than a financial sector lacking in moral leadership and motivated by greed. The community expects the big banks and other financial institutions to be held to account and to fear their regulator.

It is essential that we restore trust, eliminate conflicts of interest, and raise standards of professionalism in Australia's financial services industry. Governance, culture, remuneration, and accountability risks are core to prudential supervision. As demonstrated by the findings of the Royal Commission and noted by the Capability Review, these risks must be supervised and monitored as rigorously as traditional financial risks. This will require not only the efforts of Government and regulators but the efforts and actions of leaders and individuals within the sector.

The committee notes that the Government has been working to implement the Royal Commission's recommendations and strengthen financial regulators. In particular, the Government's ongoing work regarding the extension of the Banking Executive Accountability Regime and its investment in improving APRA's capabilities and resources in superannuation.

The committee notes APRA's progress regarding the implementation of both the Royal Commission recommendations and the APRA Capability Review recommendations. This important work will continue to strengthen APRA as a regulator and enable it continue to ensure the raising of standards of governance, culture, remuneration, and accountability across the financial services sector.

The committee notes APRA's new enforcement approach and its commitment to increasing transparency in its supervision and enforcement work. This will assist in both the raising of standards of governance, culture, remuneration, and accountability as well as rebuilding the Australian people's trust in the financial services sector.

The committee will continue to scrutinise APRA's performance, particularly its ongoing implementation of the Royal Commission recommendations and the Capability Reviews recommendations as well the ongoing strengthening of APRA's capability.

Tim Wilson MP
Chair

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Membership of the Committee

Chair	Mr Tim Wilson MP
Deputy Chair	Hon Dr Andrew Leigh MP
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	Dr Anne Aly MP
	Mr Adam Bandt MP
	Mr Jason Falinski MP
	Mr Craig Kelly MP
	Mr Andrew Laming MP
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	Mr Ted O'Brien MP

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Terms of reference

The House of Representatives Standing Committee on Economics is empowered to inquire into, and report on, the annual reports of government departments and authorities tabled in the House that stand referred to the committee for any inquiry the committee may wish to make. The reports stand referred in accordance with the schedule tabled by the Speaker to record the areas of responsibility of the committee.

Abbreviations

ACCC	Australian Competition and Consumer Commission
ADI	Authorised deposit-taking institution
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
AUSTRAC	Australian Transaction Reports and Analysis Centre
Banking Act	*Banking Act 1959* (Cth)
BEAR	Banking Executive Accountability Regime
Capability Review	Australian Prudential Regulation Authority Capability Review
GCA	governance, culture and accountability
GCRA	governance, culture, remuneration and accountability
MoU	Memorandum of Understanding
ORFR	Operational Risk Financial Requirement
Royal Commission	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
SFTs	successor fund transfers
SI(S) Act and SIS Act	*Superannuation Industry (Supervision) Act 1993* (Cth)

1

Introduction

Background

1.1 The House of Representatives Standing Committee on Economics (the committee) is empowered to inquire into, and report on, the annual reports of government departments and authorities tabled in the House that stand referred to the committee in accordance with the Speaker's Schedule.

1.2 The Australian Prudential Regulatory Authority (APRA) annual reports stand referred to the committee in accordance with this schedule. The committee resolved to conduct an inquiry into APRA's 2018 Annual Report on 24 July 2019, and extended the inquiry to cover the 2019 Annual Report on 23 October 2019.

1.3 APRA is Australia's prudential regulator. It is an independent statutory authority that supervises institutions across banking, insurance, and superannuation and promotes financial system stability in Australia. APRA oversees authorised deposit-taking institutions (ADIs), such as banks, building societies, and credit unions; general insurers, life insurers, and reinsurance companies; private health insurers; friendly societies; and superannuation funds (excluding self-managed funds).[1]

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1 APRA, 'About APRA', <https://www.apra.gov.au/about-apra>, accessed 19 February 2020.

1.4 APRA is tasked with protecting the interests of depositors, policyholders, and superannuation members by establishing and enforcing prudential standards and practices designed to ensure that, under all reasonable circumstances, financial promises made by the institutions it supervises are met within a stable, efficient and competitive financial system.[2]

1.5 APRA's vision is to 'deliver a sound and resilient financial system, founded on excellence in prudential supervision'. Its *Corporate Plan 2019-2023* sets identifies four areas of strategic focus 'aimed at strengthening outcomes for the Australian community':

- maintaining financial system resilience;
- improving outcomes for superannuation members;
- improving cyber-resilience across the financial system; and
- transforming governance, culture, remuneration and accountability across all regulated financial institutions.[3]

1.6 It also identified key areas where it will focus on uplifting its own capabilities, including:

- improving and broadening its risk-based supervision;
- improving its resolution capability;
- improving its external engagement and collaboration;
- transforming its data-enabled decision making; and
- transforming its leadership, people, and culture.[4]

Organisational change

1.7 APRA is currently undergoing a period of organisational change, following the findings of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission), and the APRA Capability Review.

1.8 The Royal Commission examined financial services entities and found serious instances of misconduct and conduct falling below community

2 APRA, *Annual Report 2018-19*, p. 18.

3 APRA, *Corporate Plan 2019-23*, August 2019, p. 5.

4 APRA, *Corporate Plan 2019-23*, August 2019, p. 5.

expectations.[5] It also scrutinised the effectiveness of Australia's financial regulators, including APRA, and raised questions regarding regualtors' ability to anticipate and deal forcefully with the widespread misconduct uncovered.

1.9 The Royal Commission recommended strengthening APRA's prudential and supervisory framework in a number of areas. APRA has indicated it will implement the recommendations as quickly as possible. There are 10 recommendations requiring APRA's direct attention. Of the 10, it is expected that nine will be completed by the end of 2020; of those, four are expected to be completed in 2019.[6]

1.10 In February 2019, the Treasurer, the Hon Josh Frydenberg MP, commissioned a capability review of APRA. The review was conducted by a three member panel led by former Chair of the ACCC, Professor Graeme Samuel AC. The Capability Review made 24 recommendations, with 19 directed to APRA and five to the Government.[7]

1.11 Appendix B provides a summary of the Government and APRA responses to the Capability Review recommendations.

Scope and conduct of the review

1.12 This review covers both the APRA Annual Report 2018 and the APRA Annual Report 2019.

1.13 The committee held three public hearings. APRA appeared before the committee on 9 August 2019 in Canberra. The Chair of the Capability Review panel, Professor Graeme Samuel AC, appeared at a public hearing on 11 September 2019. APRA then appeared before the committee for a second hearing on 2 December 2019. Details are provided at Appendix A.

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5 Commissioner Kenneth Hayne, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, February 2019.

6 APRA, 'APRA's response to Royal Commission recommendations', <https://www.apra.gov.au/apras-response-to-royal-commission-recommendations>, accessed 19 February 2020.

7 APRA, 'APRA's response to the Capability Review report', <https://www.apra.gov.au/apras-response-to-capability-review-report>, accessed 19 February 2020.

1.14 The proceedings were webcast through the Parliament's website, allowing interested parties to view or listen to the proceedings as they occurred. The transcripts of the hearings are available on the committee's website.[8]

1.15 APRA's responses to the committee's questions on notice and in writing are provided on the committee's website.[9]

1.16 This report focuses on matters raised at the public hearings.

8 House of Representatives Standing Committee on Economics, <https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/APRAReview2018/Public_Hearings>.

9 House of Representatives Standing Committee on Economics, <https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/APRAReview2018/Documents>.

2

Current issues in prudential regulation

Overview

2.1 The Australian Prudential Regulation Authority (APRA) appeared before the House of Representatives Standing Committee on Economics (the committee) at public hearings on 9 August 2019 and 2 December 2019 as part of its review of the APRA Annual Report 2018 and the APRA Annual Report 2019.

2.2 The committee also questioned the Chair of the APRA Capability Review Panel, Professor Graeme Samuel AC, who appeared at a public hearing on 11 September 2019.

2.3 Issues raised at the hearings included APRA's leadership, culture, and capability; APRA's new enforcement and supervisory approach; and raising standards in governance, culture, remuneration and accountability as well as non-financial risk management.

2.4 The committee scrutinised APRA on its implementation of the recommendations of the APRA Capability Review(Capability Review); the implementation of the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services (Royal Commission); and the response of regulated entities to the recommendations of the Royal Commission.

Improving APRA's capability

2.5 The Royal Commission raised questions regarding regulators' ability to anticipate and deal forcefully with the widespread misconduct that it uncovered. It made a number of recommendations regarding APRA's remit and regulatory approach. The Government and APRA agreed to implement the recommendations, issuing an initial response in February 2019 and an update on the progress of implementation in August 2019.[1]

2.6 The Capability Review concluded that 'variability in leadership, a conformist culture, and aversion to transparency are constraining APRA'. It emphasised that 'in matters of traditional financial risk APRA is an impressive and forceful regulator'. However, it observed that:

> … APRA's tolerance for operating beyond quantifiable financial risks has been low. APRA appears to have developed a culture that is unwilling to challenge itself, slow to respond and tentative in addressing issues that do not entail traditional financial risks. In combination with APRA's organisational structure, these factors limit its ability to deliver on the breadth of its mandate and adapt to new challenges.[2]

2.7 The Government and APRA agreed to implement the Capability Review's recommendations.[3] However, the committee noted reports that APRA Chair, Mr Wayne Byers, initially pushed back against Recommendation 4.2, which called on APRA to launch multiple CBA-style prudential inquiries, and Recommendation 4.3, regarding veto powers over the appointment of senior executives and directors of regulated entities.[4]

2.8 The committee asked the Chair of the Capability Review, Professor Graeme Samuel AC, to comment on APRA's response to the recommendations. Professor Samuel told the committee that he 'was disappointed, in that there tended to be a push back.'[5] The committee

1 APRA, 'APRA's response to Royal Commission recommendations', <https://www.apra.gov.au/apras-response-to-royal-commission-recommendations>, accessed 22 January 2020.

2 Treasury, *APRA Capability Review*, July 2019, p. xviii.

3 Treasury, *Government Response to the APRA Capability Review*, July 2019, <https://treasury.gov.au/publication/p2019-395827>, accessed 21 January 2020; APRA, *APRA's response to the Capability Review report*, <https://www.apra.gov.au/apras-response-to-capability-review-report>, accessed 21 January 2020.

4 J. Frost, L. Main and J. Kehoe, 'We're on the right track: Byres pushes back', *Australian Financial Review*, 18 July 2019, p. 1.

5 Professor Graeme Samuel AC, Chair, APRA Capability Review Panel, *Transcript*, 11 September 2019, p. 8.

asked if he had confidence that APRA would be able to adjust and to implement the necessary reforms. Professor Samuel declined to give a direct answer and replied 'let's just wait and see…I think APRA knows the job it's got to do.'[6]

2.9 Professor Samuel highlighted recommendations 4.1 and 4.2 of the Capability Review, describing them as 'as very powerful tools—sharp spears'. He told the committee that it is important that APRA utilises these tools effectively and cautioned that:

> …when you push back and say 'They are going to be too hard to do and I don't think I can do them,' what you are really doing is breaking the heads of the spears and waving around a limp stick instead.' That didn't seem to me to be a very effective way of dealing with it. Part of being a tough regulator is talking tough and then following it up with reality.[7]

2.10 Professor Samuel told the committee that APRA 'now realises that that's fundamental to what they have to do'. Professor Samuel commented that this 'starts to at least give the impression and the perception that APRA really realises what it has to do' but noted that 'we'll see how the reality turns out over the next few months to a year'.[8]

2.11 APRA told the committee that 'many things have been done to action the recommendations that were put before us by the Capability Review and the Royal Commission'. It also noted that '[2 December 2019] marks the move to a new organisational structure for APRA, which was a recommendation of the Capability Review, including a division dedicated to superannuation'.[9]

Leadership and culture

2.12 The Capability Review analysed staff survey responses and found that 'in parts of the organisation there appears to be a culture that is challenged by robust debate and internal contestability'.[10] The Capability Review found that:

6 Professor Graeme Samuel, Chair, APRA Capability Review Panel, *Transcript*, 11 September 2019, p. 8.

7 Professor Graeme Samuel, Chair, APRA Capability Review Panel, *Transcript*, 11 September 2019, p. 9.

8 Professor Graeme Samuel, Chair, APRA Capability Review Panel, *Transcript*, 11 September 2019, p. 9.

9 Mr Wayne Byers, Chair, APRA, *Transcript*, 2 December 2019, p. 2.

10 Treasury, *APRA Capability Review*, July 2019, p. 31.

> The net effect is a 'tendency towards conformity' in APRA. This is concerning in a prudential regulator. Robust internal debate and internal contestability is an important enabler of flexibility in an organisation and in the identification and management of emerging risks to the financial system.[11]

2.13 Given these findings, the committee asked APRA if there needs to be either a change in APRA's leadership or a significant cultural shift in response. APRA told the committee that it takes 'very seriously all of the feedback received'. It advised that 'lifting our leadership capability [is] a priority' and noted that 'leadership in APRA has made great strides…there has been a substantial refresh of leadership within APRA over the last couple of years, and we continue to do that as we build the resources of the organisation'.[12]

2.14 The committee noted APRA's pushback regarding the findings and questioned whether APRA has accepted accountability for the shortcomings in leadership and culture identified by the Capability Review. APRA told the committee that 'the buck has to stop with all of the leaders in APRA'.[13] When asked what metrics APRA will use to gauge improvement in its leadership and culture, APRA explained that:

> …we will have a BEAR regime, just like we're applying to entities, that will apply to us…So what you'll have is greater accountability within the organisation to deliver things and for what people are responsible for and a greater ability to assess leadership within the organisation, led from the top…There are structured conversations between managers and people on expectations and on the delivery of that. Ultimately it's not a check-a-box, if you like; it is a subjective decision, like any performance or leadership framework.[14]

2.15 APRA advised that it uses a number of tools to assess performance and leadership behaviours, including 'a regular program of 360-degree feedback, a regular staff engagement survey every two years and, in between those two-yearly surveys, pulse surveys.'[15] APRA explained that:

> Through those mechanisms we will be getting specific feedback from staff at all levels around the degree to which our leaders are

11 Treasury, *APRA Capability Review*, July 2019, p. 32.
12 Mr Wayne Byres, Chairman, APRA, *Transcript*, 9 August 2019, pp. 3-4.
13 Mr Wayne Byres, Chairman, APRA, *Transcript*, 9 August 2019, p. 4.
14 Mr John Lonsdale, Deputy Chair, APRA, *Transcript*, 9 August 2019, p. 5.
15 Mrs Helen Rowell, Deputy Chair, APRA, *Transcript*, 9 August 2019, p. 5.

> meeting the expectations that we have established in our leadership behaviour framework. Starting from this year, we have changed our performance assessment framework to put a 50 per cent weight on meeting those behaviour expectations as part of our performance assessment process.[16]

2.16 The committee asked Professor Samuel whether he was confident APRA had heeded the Capability Review's critique of APRA's internal culture. Professor Samuel advised that it is 'too early to say'. However, he acknowledged that 'there is a recognition that there are things that need to be done'.[17]

2.17 In October 2019, APRA announced a number of new executive appointments, reflecting its new organisational structure. APRA stated that it will move to an industry-based supervision model, with separate supervisory divisions responsible for superannuation, insurance, and banking. Under the new structure, each of APRA's six operating divisions will be led by an Executive Director.[18]

Resourcing

2.18 The Capability Review noted that, between 2014-15 and 2018-19, the Government reduced APRA's funding by $23 million as part of the efficiency dividends applied across Commonwealth agencies.[19] The committee asked whether the efficiency dividend has had an impact on staffing levels. It also questioned whether resourcing was a contributing factor to the conservative approach that APRA took to supervision and enforcement that was highlighted by the Royal Commission and the Capability Review.

2.19 APRA told the committee that 'supervision is all about making choices' and that it deploys resources 'where we think we will get maximum effectiveness and achieve the best outcomes for the community'.[20] APRA advised that, like all public service agencies, it has to show that it is operating efficiently. Furthermore, as it is funded by industry, it also must show that it is using the industry's money wisely. APRA explained that 'like every other regulator and every other Public Service agency—we'd

16 Mrs Helen Rowell, Deputy Chair, APRA, *Transcript*, 9 August 2019, p. 5.

17 Professor Graeme Samuel, Chair, APRA Capability Review Panel, *Transcript*, 11 September 2019, p. 8.

18 APRA, 'APRA announces new executive roles', *Media Release*, 3 October 2019.

19 Treasury, *APRA Capability Review*, July 2019, p. 49.

20 Mr Wayne Byres, Chairman, APRA, *Transcript*, 9 August 2019, p. 7.

much rather have more resources than less, but I think we've achieved some good outcomes with what we have'.[21]

2.20 When asked if it had been given the full amount of additional resources it requested in the most recent funding round, APRA advised that 'in the two recent rounds of funding increases—so the one announced in November and then the announcement of further funding in the budget—that was our full request, yes'.[22]

2.21 APRA was asked whether it would be seeking additional funding to implement the recommendations of the Capability Review. APRA advised that recommendations from the Royal Commission and Capability Review asked APRA to 'step into new areas of activity or step up the intensity of what we do' and that this 'inevitably…raises some resource questions'.[23]

2.22 APRA told the committee that it has received additional funding to support its governance, culture, remuneration and accountability (GCRA) work and the extension of the BEAR regime. However, it noted that, despite there being a range of areas that the Capability Review recommend APRA devote more resources, 'there's a limit to how thin we can spread our resources, given the Capability Review also said, quite strongly, that we shouldn't jeopardise the core tasks that we've traditionally done well around financial safety and resilience'.[24]

Resourcing for superannuation

2.23 APRA was asked to comment on the Capability Review's finding that there was a high turnover of APRA staff with superannuation experience and that one of the reasons given for these departures was a lack of resources supporting superannuation.[25] APRA advised that 'flowing from the Capability Review, which identified a range of areas where we were tasked to expand, we are in discussions with Government about resourcing, and super is part of the discussion'.[26]

2.24 APRA explained that, as recommended by the Capability Review, it has created a separate division within APRA dedicated to superannuation. It advised that the Superannuation Division has 111 staff which 'includes the specific Superannuation Division, plus…the key expert functions that sit

21 Mr Wayne Byres, Chairman, APRA, *Transcript*, 9 August 2019, p. 8.

22 Mr Wayne Byres, Chair, APRA, *Transcript*, 9 August 2019, p. 8.

23 Mr Wayne Byres, Chairman, APRA, *Transcript*, 9 August 2019, p. 8.

24 Mr Wayne Byres, Chairman, APRA, *Transcript*, 9 August 2019, pp. 8-9.

25 Treasury, *APRA Capability Review*, July 2019, p. 106.

26 Mr Wayne Byres, Chair, APRA, *Transcript*, 2 December 2019, p. 7.

around it, which is our policy, legal, and data and analytics teams'. APRA noted that 'within the super division we have currently got about 62 frontline supervisors out with institutions'.[27]

2.25 The committee asked if APRA has any skill deficiencies with regards to superannuation. APRA advised that 'we still need to build capability in our policy, data and analytics, and front line'. It explained that 'we've got coverage across all of the areas of the skills that we need, but in terms of depth and the capacity to go further we need to continue to grow.[28] APRA told the committee that it has 'probably added 20 per cent of staff', increasing 'from about 80 to 110 in the super area over the last six months, and that [it] will continue to add some more'.[29]

Enforcement

2.26 The Royal Commission found that 'too often, financial services entities that broke the law were not properly held to account' and explained that 'misconduct will be deterred only if entities believe that misconduct will be detected, denounced and justly punished'. The Royal Commission emphasised that the Australian community expects regulators to hold financial service entities that break the law to account.[30]

2.27 The Capability Review was critical of APRA's preference to work with regulated entities 'behind the scenes', explaining that 'this limits its impact and authority'.[31] The Capability Review advised that 'APRA needs to shift the dial towards a more strategic and forceful use of communication to ensure that it maximises its impact with regulated entities'.[32] The Capability Review explained that:

> While cooperation is always to be preferred to compulsion, regulated entities must provide APRA with the information it needs. An approach involving protracted behind the scenes negotiations of prudential issues is out of step with public

27 Ms Suzanne Smith, Executive Director, Superannuation, APRA, *Transcript*, 2 December 2019, p. 12.

28 Ms Suzanne Smith, Executive Director, Superannuation, APRA, *Transcript*, 2 December 2019, p. 12.

29 Mrs Helen Rowell, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 12.

30 Royal Commission into Misconduct into the Banking, Superannuation and Financial Services Industry, *Final Report*, Vol. 1, pp. 3-4.

31 Treasury, *APRA Capability Review*, July 2019, p. xviii.

32 Treasury, *APRA Capability Review*, July 2019, p. xviii.

> expectations of regulators following the Hayne Royal Commission.[33]

2.28 In April 2019, APRA released its Enforcement Approach, which sets out how APRA will 'use its enforcement powers to prevent and address serious prudential risks, and to hold entities and individuals to account'.[34] In September 2019, APRA updated its Enforcement Approach to 'include principles that APRA will take into account when considering when and how to publicise its enforcement actions, and guidance on APRA's approach to enforcement for data submissions'.[35]

2.29 APRA's Enforcement Approach states that it will 'use enforcement where appropriate to **prevent and address serious prudential risks** and to hold entities and individuals to account'.[36] It cautions that 'as a preventative, safety-based regulator, APRA may do this well before the risks (including financial, operational and behavioural risks) present an imminent threat to financial viability' and explains that:

> APRA will use enforcement action to achieve its mandate of protecting the interests of depositors, policyholders and superannuation fund members and to deter unacceptable practices from occurring in the future - this includes taking public enforcement action for wider deterrence purposes.[37]

2.30 The Enforcement Approach advises that 'APRA will use its enforcement powers strategically to achieve its prudential objectives'. It explained that, in deciding what action to take it will always take into account the facts, matters and circumstances of the particular case under consideration. The decision will also be risk-based, forward-looking, outcomes-based, and consider the need to deter a recurrence of serious prudential risks both at the entity concerned and also more widely across the industry.[38]

2.31 The committee asked APRA to explain how its enforcement appetite and enforcement activity has changed in response to the Royal Commission and Capability Review. APRA emphasised that, unlike the Australian Securities and Investments Commission (ASIC) or the Australian Competition and Consumer Commission (ACCC), it is not an

33 The Treasury, *APRA Capability Review*, July 2019, p. xviii.

34 APRA, 'APRA releases new Enforcement Approach', *Media Release*, 15 April 2019.

35 APRA, 'APRA updates Enforcement approach to provide clarity around transparency and data reporting', *Media Release*, 3 September 2019.

36 Emphasis in original.

37 APRA, *APRA's Enforcement Approach*, September 2019, p. 7.

38 APRA, *APRA's Enforcement Approach*, September 2019, pp. 8-9.

enforcement-based agency, but rather a 'safety-led organisation'[39], explaining that:

> APRA is a safety regulator in the same way that I'd look at CASA, on airline safety, or the bodies responsible for nuclear energy safety or health safety. Their work is really to minimise the potential for large harm of a particular system. That's the way that I would describe it, as opposed to coming in at the end, where something goes wrong, and trying to resolve issues.[40]

2.32 However, APRA advised that it has 'demonstrably increased our appetite to be what I would term "constructively tough" since April, which is when the enforcement review and approach came out'.[41] APRA provided data comparing its enforcement activities in 2018 and 2019 (see Table 2.1).

Table 2.1 APRA enforcement activity, 2018-2019

	January—December 2018	January—6 December 2019
Notices to produce	2	64
Investigations commenced	1	3*
Formal directions	2	3*
Court Enforceable Undertakings	1	0
Licence conditions	1	2
Court action	1	0
Infringement notices	0	1**
Number of Entities moved from Normal to Oversight	22	20
Number of Entities move from Oversight to Mandated Improvement	6	12

* Further items under consideration as at 6 December may be completed by end of December 2019.

** In total 715 infringement notices were issued to Westpac in August 2019 in respect of FSCODA breaches. It was necessary to issue this number of notices due to the way the statute is written.

Source *APRA, Response to question on notice, APRAQON19, p. 1.*

2.33 APRA told the committee that its total spending on enforcement mechanisms was 1.2 per cent ($1.8 million) of the overall APRA costs in 2017-18 and 2.3 per cent ($3.7 million) in 2018-19. It advised that the total spending will be materially higher again in 2019-20 'as APRA addresses referrals from the Royal Commission'.[42]

39 Mr John Lonsdale, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 24.

40 Mr John Lonsdale, Deputy Chair, APRA, *Transcript*, 9 August 2019, p. 7.

41 Mr John Lonsdale, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 24.

42 APRA, *Response to question on notice*, APRA20QON, p. 1.

Supervision

2.34 APRA advised that its supervisory approach is 'risk-based and requires APRA to identify and assess risk and respond to the areas of greatest risk'. It explained that risk assessments and supervisory action plans are maintained on a dynamic basis and reviewed at least annually.[43]

2.35 APRA noted that its supervisors undertake a range of activities (Table 2.2). APRA conducts ongoing analysis and assessment of data and documents required to be submitted under its Prudential Standards. It also undertakes a series of engagement activities designed to take action and inform its assessments.[44]

Table 2.2 Activities undertaken by APRA supervisors across regulated industries

Activity	2018/19
Entity Risk Assessments	551
Supervisory Action Plans	447
Prudential Reviews	164
Prudential Consultations and Meetings	308
Approvals/Sanctions	415
Contact Home Regulator	72

Source APRA, Annual Report 2018-19, September 2019, pp. 8-9.

2.36 The committee asked what steps APRA is taking to address the Capability Review's concerns regarding transparency in its supervision and enforcement work. APRA explained that it will be more transparent in its approach, advising that 'we will issue press releases, we will name and we will make very clear what we're doing on enforcement'. However, it added the caveat that it must also consider financial stability when determining how transparent it is with supervisory material.[45]

2.37 In January 2020, APRA published its supervision priorities for the next 12 to 18 months, including:

- maintaining financial resilience, including through increased focus on recovery and resolution planning and stress testing;
- conducting a range of GCRA-related supervisory reviews and deep dives, and using entity self-assessments to drive greater accountability;

43 APRA, *Annual Report 2018-19*, September 2019, pp. 8-9.
44 APRA, *Annual Report 2018-19*, September 2019, pp. 8-9.
45 Mr John Lonsdale, Deputy Chair, APRA, *Transcript*, 9 August 2019, p. 6.

- encouraging underperforming superannuation funds to urgently improve member outcomes or exit the industry; and
- more closely assessing institutions' capability to deal with emerging and accelerating risks, such as cyber-security and climate change.[46]

Cooperation between regulators

2.38 The committee noted that the financial sector is regulated by multiple regulators (e.g. APRA, ASIC, ACCC, AUSTRAC, etc.) and asked what protocols are in place to ensure strong communication and cooperation between the regulators. APRA advised that 'there is extensive collaboration and engagement with regulators, both domestically and internationally'. It explained that:

> We have, I think, around 18 memorandums of understanding in place with different regulatory agencies, domestically. The key ones are obviously ASIC, ACCC and AUSTRAC. They are the key ones. We have reworked the longstanding MOU with ASIC…that will set out how we will work more closely with ASIC going forward…we will have commissioners and members meeting quarterly. We've set up subgroups on different industry lines that will carry work forward—and report, if necessary…As well as that, we have the Council of Financial Regulators, which is a bigger forum.[47]

2.39 APRA assured the committee that it is confident that these arrangements ensure that issues are not 'falling between the cracks' between the regulators.[48]

2.40 The committee asked how the Memorandum of Understanding (MoU) between APRA and ASIC has impacted cooperation between the regulators. APRA advised that the updated APRA-ASIC MoU was released on 29 November 2019 and 'reflects the agencies' commitment to closer collaboration and information sharing'.[49]

2.41 APRA told the committee that the MoU is 'only one part of how APRA and ASIC are establishing closer cooperation'. It advised that 'both agencies are regularly meeting under a revised engagement structure

46 APRA, 'APRA sets out policy and supervision priorities for 2020', *Media Release*, 30 January 2020.

47 Mr John Lonsdale, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 10.

48 Mr John Lonsdale, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 10.

49 APRA, *Response to question on notice*, APRA05QW, p. 1.

supported by committees dedicated to banking, insurance, superannuation and enforcement'. APRA explained that 'these new arrangements have resulted in a significant increase in engagement on areas of common interest'.[50]

Rebuilding trust in the financial services sector

2.42 The Royal Commission found that Australia's financial sector suffered from a lack of moral leadership and a corporate culture motivated by greed. Evidence provided to the Royal Commission exposed shocking and widespread examples of misconduct and highlighted systemic failings throughout the banking and financial services sector.

2.43 APRA told the committee that its *Corporate Plan 2019-23*, published in August 2019, is 'built on the recommendations from, amongst others, the Royal Commission and Capability Review' and sets out four key community outcomes:

- maintaining financial system safety and resilience;
- improving outcomes for superannuation members;
- transforming governance, culture, remuneration and accountability within the financial sector; and
- improving cyber resilience across the financial system.[51]

2.44 The committee asked whether APRA is satisfied that the major banks and other financial services entities, such as insurers, are responding adequately to the findings of the Royal Commission. APRA told the committee that the financial institutions are taking the findings and recommendations seriously, explaining that:

> My sense is that certainly they are. I look at and visit banks across the country. I've met with the board chairs of three major banks in the last fortnight. I can tell you that the remediation work that's happening is part of the self-assessments. The work that is coming out of the royal commission for the banks to do is being taken very seriously.[52]

50 APRA, *Response to question on notice*, APRA05QW, p. 1.

51 Mr Wayne Byres, Chair, APRA, *Opening Statement to the House of Representatives Standing Committee on Economics*, 2 December 2019.

52 Mr John Lonsdale, Deputy Chair, APRA, *Transcript*, 9 August 2019, p. 10.

2.45 APRA told the committee that it is closely examining the 12 referrals it received from the Royal Commission and that they are 'well progressed'.[53] However, it noted that 'the vast majority of the 12 contain no penalty'. APRA provided an overview of the issues it is examining, explaining that:

> Without going through each of the 12, the predominant issues are around section 52 of the SI(S) Act, covenants; section 62 of the SI(S) Act, the sole purpose test; CPS 220, risk management—there's one particular one there; and SPS 521, on conflicts of interest. There are a few other contraventions, but in the main, if I group them, they are the key ones.[54]

2.46 When asked about the AUSTRAC statement of claim in relation to Westpac, APRA noted that 'these are very serious allegations'. APRA advised that it has carefully considered what the allegations mean for the prudential standing of Australia's second largest bank, explaining that:

> The bank is financially strong, but the AUSTRAC matter has raised issues of governance, culture and accountability in relation to risk management, particularly as it relates to AML/CTF obligations. While we must be careful not to duplicate or cut across matters for which AUSTRAC is the appropriate regulator, and which are before the Courts, we are actively considering what further action by APRA is required. This includes examining whether obligations under the Banking Executive Accountability Regime have been met, and how Westpac's management of operational and compliance risks more broadly needs to be enhanced. As would be expected, we are also ensuring we closely coordinate our activities with our fellow regulators – especially AUSTRAC and ASIC.[55]

Raising standards in governance, culture, remuneration, and accountability

2.47 The need to raise standards in GCRA across the financial services sector was a key finding of both the Royal Commission and Capability Review. Commissioner Hayne remarked:

> Until recently, however, too little attention has been given in Australia to regulatory, compliance and conduct risks. Too little

53 Mrs Helen Rowell, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 22.

54 Mr John Lonsdale, Deputy Chair, APRA, *Transcript*, 9 August 2019, p. 10.

55 Mr Wayne Byres, Chair, APRA, *Opening Statement to the House of Representatives Standing Committee on Economics*, 2 December 2019.

> attention has been given to the evident connections between compensation, incentive and remuneration practices and regulatory, compliance and conduct risks.[56]

2.48 The Royal Commission recommended that APRA build 'a supervisory program focused on building culture that will mitigate the risk of misconduct'. [57] It stated that APRA should 'assess the cultural drivers of misconduct in entities' and 'encourage entities to give proper attention to sound management of conduct risk and improving entity governance'.[58]

2.49 Similarly, the Capability Review noted that 'GCA risks are core to prudential supervision and, for an ex-ante regulator like APRA, should already have more prominence in its work'.[59] The Capability Review advised that 'embedding new resources and developing a culture that supervises GCA risks as rigorously as traditional financial risks should be one of APRA's priorities'.[60]

2.50 APRA acknowledged the Capability Review's findings and told the committee that it 'needs to get much more active in this space'. APRA advised that it has published a comprehensive work plan on the broad issue of GCRA and has received additional funding from Government to resource this. APRA explained that it is 'actively building our team' and 'intensifying our supervisory effort':

> …we published a plan which talks about how we are going to strengthen the prudential framework, and have a stronger focus on governance and accountability…We are obviously working with the government on the expansion of the BEAR regime to other industries, and then we're building up the expertise on the hardest one to tackle, which is the cultural side. But we're actively pursuing those issues.[61]

2.51 APRA emphasised that CGRA is one of its key priorities, noting that it is one of the four key community outcomes identified in its Corporate Plan. APRA told the committee that 'one of the key things that we want to achieve is transforming governance, culture, remuneration and

56 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, Vol. 1, February 2019, p. 15.

57 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, Vol. 1, February 2019, p. 393.

58 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, Vol. 1, February 2019, p. 393.

59 Treasury, *APRA Capability Review*, July 2019, p. xxi.

60 Treasury, *APRA Capability Review*, July 2019, p. xxi.

61 Mr Wayne Byres, Chair, APRA, *Transcript*, 2 December 2019, pp. 8-9.

accountability within institutions, making the system better and to have better outcomes for consumers'.[62]

2.52 When asked how leadership fits into APRA's consideration of GCRA, APRA explained that it will be asking questions such as:

> Are the leaders, from the board down, setting the right tone from the top, setting the right incentives for people, leading in the right way, encouraging the right behaviours? And then: are they holding people to account; rewarding good behaviour but also making sure there are consequences for poor outcomes?[63]

2.53 The committee asked what role APRA will play in ensuring that a good GCRA framework is exercised and enforced. APRA advised that:

> …what you'll see APRA doing is talking to boards more. We will be asking, we will be probing, about the risk culture. We'll be making sure that they have a risk appetite and that they have thought about risk. It's the institutions operating within those boundaries. It's about making sure, where they are outside those boundaries, they have a mitigation plan, and people are held to account. So the BEAR is part of that story. The new legislated program that the government is working on—the extension of the BEAR—is a part of that…as well as the remuneration proposals that we've got, which will seek to make sure that where there is poor conduct, that is reflected in the executives' variable pay going forward. So APRA have, I think, a very expansive work program over the next few years to make sure that we can lift GCRA leadership outcomes in the institutions to produce better outcomes.[64]

2.54 The committee asked APRA whether the sector had learned from and strengthened GCRA following the Commonwealth Bank of Australia (CBA) AML/CTF compliance issues in 2017[65], and, if so, why this did not prevent the issues at Westpac. APRA told the committee that 'in one sense, the Commonwealth Bank may have well helped bring this issue out'. It explained that:

> …following the Commonwealth Bank issue, all institutions clearly went back and looked much harder. As I said, the Commonwealth

62 Mr John Lonsdale, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 9.

63 Mr Wayne Byres, Chair, APRA, *Transcript*, 2 December 2019, p. 9.

64 Mr John Lonsdale, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 9.

65 Commonwealth Bank of Australia, 'CBA and AUSTRAC resolve AML/CTF proceedings', *Media Release*, 4 June 2018.

> Bank issue was in late 2017. It was brought to the public's attention by AUSTRAC. Part of the flurry of activity of investigation within Westpac was saying, 'Gee, whiz, could we have these same problems?' In the first half of 2018, they self-reported to AUSTRAC that they had some problems. So I don't think it's right to suggest that people haven't learnt from the previous examples. Also, we need to remember that the problems were in existence for some time. They were self-reported in 2018. At that stage, they hadn't really had time to digest the CBA lessons et cetera. But I think there were clearly repercussions, and the CBA exercise helped bring this one to light.[66]

Remuneration

2.55 APRA released a draft prudential standard, *CPS 511 Remuneration*, aimed at clarifying and strengthening remuneration requirements in APRA-regulated entities. The proposed reforms address the Royal Commissions' recommendations 5.1 to 5.3. It requires entities to maintain a remuneration framework that is appropriate to its size, business mix and complexity and which includes a documented remuneration policy.[67]

2.56 APRA described the new standard as 'a significant intervention proposed by the regulator in terms of remuneration provided by entities'.[68] It explained that 'if you can get better alignments within institutions in terms of the incentives, that will produce better outcomes ultimately for communities':

> There are three parts to it. Firstly, we are putting more obligations on boards; secondly, we have proposed the use of financial metrics to determine individual's variable pay be capped at 50 per cent, as opposed to entirely profit driven; and, thirdly, longer vesting periods, up to seven years for CEOs, with clawback and malice. [69]

2.57 APRA advised the committee that there has been 'a lot of interest' in the draft, which has received over 70 submissions. APRA explained that it has spoken to 'a lot of people from shareholders to bank executives, to the community to try and get alignment on where we might land and we are

66 Mr Wayne Byres, Chair, APRA, *Transcript*, 2 December 2019, p. 8.

67 APRA, *Draft Prudential Standard CPS 511: Remuneration*, July 2019.

68 Mr John Lonsdale, Deputy Chair, APRA, *Transcript*, 9 August 2019, p. 13.

69 Mr John Lonsdale, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 5.

assessing what the proposals are saying'. APRA advised that the results of the consultation are expected in 2020.[70]

Banking Executive Accountability Regime

2.58 In 2018, the Government introduced the Banking Executive Accountability Regime (BEAR) to establish clear expectations of accountability for authorised deposit-taking institutions (ADIs), their directors, and senior executives. The BEAR commenced on 1 July 2018 for large ADIs and 1 July 2019 for medium and small ADIs.[71] Recommendation 6.8 of the Royal Commission called for the BEAR to be extended to all APRA-regulated financial services institutions.[72]

2.59 The committee asked APRA how the BEAR will enable it to better monitor governance, culture and accountability risks within entities under its supervision. APRA explained that:

> What it will enable APRA to do that will be better than what we had before is that when APRA's conducting its supervision, if we discover wrongdoing or if we discover some contravention of a standard or guidance that we're not happy with, we will be able to ask the question, 'Who is the accountable person?' and we will be able to backtrack through systems to see, 'Why did that happen?'—so it will be clear where the point was: why did that happen—and just as importantly, I think, 'Was that accountable person held to account?'[73]

2.60 The committee asked what the appropriate course of action around accountability in the Westpac case would be under the BEAR legislation. APRA noted that 'the breaches occurred by and large…prior to the BEAR taking effect'. APRA advised that, had the breaches occurred after the legislation had taken effect, there are two sets of obligations under the BEAR, one set is at the level of the entity:

> …an obligation on the entity to, amongst other things, conduct its affairs with due skill, care and diligence, cooperate with APRA et cetera—there are a range of obligations there. Those are obligations on the entity as an organisation. A failure to adhere to those obligations allows APRA to seek fines from the court. We

70 Mr John Lonsdale, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 5.

71 APRA, 'The BEAR gets bigger', *Media Release*, 1 July 2019.

72 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, Vol. 1, February 2019, p. 458.

73 Mr John Lonsdale, Deputy Chair, APRA, *Transcript*, 9 August 2019, p. 11.

> can't impose them ourselves, but we can apply to the court for a penalty.[74]

2.61 The other set of obligations concerns those designated as 'accountable persons' under the Act. This broadly includes the board of directors, individually; the chief executive; and, by and large, the next layer of group executives within the entity. APRA explained that:

> Each of those accountable persons has their own obligations under the Banking Executive Accountability Regime to, similarly, act honestly; to conduct their affairs with due skill, care and diligence; and to make sure they don't do anything that might unduly jeopardise the prudential standing or reputation of a bank. In that case, the immediate onus is on the bank to make sure those people are appropriately held to account, but if there is a sense that that is not done efficiently or effectively then there is the opportunity for APRA, if the circumstances warrant it and the behaviour is sufficiently serious, to seek disqualification of individuals. [75]

2.62 The committee asked whether APRA is conducting an investigation into Westpac. APRA explained that it is 'actively looking at the issues' but that at the moment is it 'preparing to look at how we will proceed, given the sensitivities of three regulators on an issue and the importance that one of those issues is currently before the court' but could not provide a timeframe for these considerations. APRA explained that:

> We are actively considering the matters now, in terms of what courses of action and what steps we're going to take. It may be broader than just a particular investigation under the BEAR. As to the speed with which we can pursue each of those steps, some will be entirely within our control and we can pursue them reasonably quickly; others, though, may need to be coordinated with other regulators or may need to wait until matters before the court are properly decided. I'm sorry to give the answer, but it depends.[76]

2.63 On 17 December 2019, APRA announced that a formal investigation into the conduct of Westpac had commenced. The investigation will examine whether Westpac, its directors and/or its senior managers breached the *Banking Act 1959* (Banking Act)—including the BEAR—or contravened APRA's prudential standards.[77]

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74 Mr Wayne Byres, Chair, APRA, *Transcript*, 2 December 2019, p. 3.

75 Mr Wayne Byres, Chair, APRA, *Transcript*, 2 December 2019, p. 3.

76 Mr Wayne Byres, Chair, APRA, *Transcript*, 2 December 2019, p. 3.

77 APRA, *Response to question on notice*, APRA10QW, p. 1.

Prudential inquiries

2.64 In August 2017, APRA commenced a Prudential Inquiry into CBA resulting from 'a number of incidents in recent years that have damaged the reputation and public standing of the CBA group'. The purpose of the Prudential Inquiry was 'to examine the frameworks and practices in relation to governance, culture and accountability within the CBA group that have contributed to these incidents'.[78]

2.65 APRA found that 'CBA's governance, culture and accountability frameworks and practices are in need of considerable improvement' and that non-financial risks (e.g. operational, compliance, conduct, etc.) 'were neither clearly understood nor owned, the frameworks for managing them were cumbersome and incomplete, and senior leadership was slow to recognise, and address, emerging threats to CBA's reputation'.[79]

2.66 At the publication of the Final Report of the Prudential Inquiry into the Commonwealth Bank of Australia, APRA noted that 'given the nature of the issues identified in the Report, all regulated financial institutions will benefit from conducting a self-assessment to gauge whether similar issues might exist in their institutions'. It also advised that 'APRA supervisors will also be using the Report to aid their supervision activities, and will expect institutions to be able to demonstrate how they have considered the issues within the Report'.[80]

2.67 The Capability Review recommended (recommendation 4.2) that APRA 'build on the CBA Prudential Inquiry and entity self-assessments by embedding CBA-style prudential inquiries as an ongoing part of its supervisory toolkit' and stated that:

> The Panel would expect to see several prudential inquiries in the first few years to reinforce the need for rigorous self-assessments (see recommendation 4.1). In time, the inquiries should involve retail and industry superannuation, insurance and ADI entities.[81]

2.68 The committee asked APRA for an update on the implementation of this recommendation. APRA advised the committee that this is part of its broader GCRA strategy, but that it is still considering how to best implement the recommendation. It explained that:

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78 APRA, *Prudential inquiry into the Commonwealth Bank of Australia*, April 2018, p. [1].

79 APRA, 'APRA releases CBA Prudential Inquiry Final Report and accepts Enforceable Undertaking from CBA', *Media Release*, 1 May 2018.

80 APRA, 'APRA releases CBA Prudential Inquiry Final Report and accepts Enforceable Undertaking from CBA', *Media Release*, 1 May 2018.

81 Treasury, *APRA Capability Review*, July 2019, p. 92.

> …we will need to think about exactly how we do that—whether a CBA type of inquiry is fit for every entity or whether we might tailor that a little bit; when we might use it; and how we might complement it with other reviews we will do, having more thematic reviews across organisations as well as deep-dive reviews. We're looking at that. We are looking at revising at least two prudential standards that go to governance and risk framework and how the boards think about that currently. We think we need to provide a bit more granularity on that work.[82]

2.69 The committee asked whether APRA would conduct a Prudential Inquiry into Westpac, noting that there are a number of similar issues to those that prompted the CBA inquiry, particularly around prudential risk and public confidence. APRA told the committee that it will consider it, explaining that:

> We did the prudential inquiry partly because we almost didn't have a choice. Our powers were much weaker than they are today, and we didn't have the BEAR in those days. We've had a strengthening of our investigation powers, and we now have the BEAR, which we need to uphold but which also hangs over the heads of institutions…The prudential inquiry was done the way it was done because it fitted the powers we had at the time—or, in some cases, the lack of powers we had at the time…at this stage we haven't reached a view about whether that particular approach is the optimal one to use in this case.[83]

Self-assessments

2.70 In June 2018, APRA wrote to the boards of 36 of the country's largest banks, insurers and superannuation licensees, asking them to gauge whether the weaknesses uncovered by the CBA Prudential Inquiry also existed in their own companies. In May 2019, APRA published an information paper regarding the key findings and common themes of the self-assessments and noted that many of the issues of concern identified by the CBA Prudential Inquiry are not unique to that institution, including that:

- non-financial risk management requires improvement;
- accountabilities are not always clear, cascaded, and effectively enforced;

82 Mr John Lonsdale, Deputy Chair, APRA, *Transcript*, 9 August 2019, p. 5.

83 Mr Wayne Byres, Chair, APRA, *Transcript*, 2 December 2019, p. 26.

- acknowledged weaknesses are well-known and some have been long-standing; and
- risk culture is not well understood, and therefore may not be reinforcing the desired behaviours.[84]

2.71 The Capability Review recommended (recommendation 4.1) that APRA require entities to undertake a self-assessment into governance, culture and accountability risks every two years. It also recommended that the self-assessments be more prescriptive than APRA's recent program; be published along with any rectification requirements imposed by APRA; and that an expert panel be established to conduct more in-depth assessments of entities.[85]

2.72 The committee asked whether the self-assessment program provided any indication that other institutions, such as Westpac, were at risk in the AML/CTF space. APRA explained that 'many of the issues that existed in the Commonwealth Bank around complexity and lack of accountability were not unique to the Commonwealth Bank'. APRA noted that 'a number of institutions have public statements saying that they have issues that they are dealing with with AUSTRAC'.[86]

2.73 Professor Samuel noted that some entities (NAB, Westpac and AustralianSuper) made their self-assessments public. He told the committee that ANZ released a 'self-censored version' and the other 32 entities 'kept their self-assessments totally secret'. Professor Samuel emphasised the benefits of transparency for self-assessments:

> It is a really interesting way to get, if you like, an honest appraisal of an organisation as to what it is doing in governance culture and accountability. And, frankly, I would move that over into issues like superannuation, insurance, private health insurance—right across the board, with different requirements. They would be public and transparent. That would lead then to a revelation of issues that had not been honestly disclosed.[87]

2.74 The committee asked APRA if there will be greater transparency around its self-assessments work in the future. APRA explained that the self-assessments were not published because 'they were done on the understanding that they would remain confidential.' However, APRA

84 APRA, *Information Paper: Self-assessments of governance, accountability and culture*, May 2019, p. 4.

85 Treasury, *APRA Capability Review*, July 2019, p. 91.

86 Mr Wayne Byres, Chair, APRA, *Transcript*, 2 December 2019, p. 8.

87 Professor Graeme Samuel, Chair, APRA Capability Review Panel, *Transcript*, 11 September 2019, p. 3.

advised that 'we're moving to a more transparent footing, so going forward we will need to be very clear with entities about what we'll be doing'.[88]

Veto power

2.75 The Capability Review recommended (recommendation 4.3) that APRA be given a 'non-objections power to veto the appointment or reappointment of directors and senior executives of its regulated entities'. The Capability Review explained that this 'would bring [APRA] into line with international regulators and strengthen its capacity to pre-emptively regulate GCA risks'. It noted that 'this power should be available to APRA only where the risks associated with the entity, including but not limited to member outcomes for superannuation funds, warrant it'.[89]

2.76 The committee asked APRA how this would be implemented. APRA explained that it accepts and supports the recommendation, but emphasised that 'whatever process and whatever set of requirements are put in place, ultimately the responsibility for the quality of appointments is with the entities that make them, so it should be framed as a non-objection power rather than an approval power or a vetting power'.[90]

2.77 When asked to clarify how and when such a power would be used, APRA told the committee that it is 'one of the issues of detail that needs to be worked through'.[91] APRA explained that the recommendation refers to the use of the power only where the risks associated with the entity warrant it and that the intention is not for APRA to become the gatekeeper to every position at the executive and director level.[92]

2.78 APRA advised that it supports the Government's approach of considering this recommendation in the context of the extension of the BEAR regime. APRA explained that 'there's an opportunity to come back and look at the BEAR regime as it's extended beyond banking, and I think that's absolutely the right way to approach it'.[93]

88 Mr John Lonsdale, Deputy Chair, APRA, *Transcript*, 9 August 2019, p. 6.
89 Treasury, *APRA Capability Review*, July 2019, p. 92.
90 Mr Wayne Byres, Chair, APRA, *Transcript*, 9 August 2019, p. 17.
91 Mr Wayne Byres, Chair, APRA, *Transcript*, 9 August 2019, p. 17.
92 Mr Wayne Byres, Chair, APRA, *Transcript*, 9 August 2019, p. 17.
93 Mr Wayne Byres, Chair, APRA, *Transcript*, 9 August 2019, p. 17.

Levies

2.79 APRA explained that it is industry-funded, with almost all of its costs distributed across the industries that it supervises.[94] The Financial Institutions Supervisory Levies are collected by APRA from the financial sector and are used to fund elements of financial industry-related operations of APRA, ASIC, the ACCC, the Australian Taxation Office's SuperStream, and the Department of Human Services.[95]

2.80 The committee noted that levies on smaller banks are rising by approximately 14 per cent in 2019-20, while decreasing for the larger banks by four per cent. APRA confirmed that this is accurate (see Table 2.3).[96]

Table 2.3 Levy amounts on ADIs

Asset base	$50m ($'000)	$500m ($'000)	$5b ($'000)	$25b ($'000)	$100b ($'000)	$800b ($'000)
2017-18	10.5	25.0	250.3	1,251.7	4,092.2	11,738.0
2018-19	15.5	26.1	261.1	1,305.5	4,025.5	11,203.9
2019-20	15.5	29.8	298.2	1,490.9	4,080.0	10,767.7
Change (%) 2018-19 v 2017-18	47.1	4.3	4.3	4.3	(1.6)	(4.6)
Change (%) 2019-20 v 2018-19	(0.2)	14.2	14.2	14.2	1.4	(3.9)

Source APRA, Response to question on notice, APRA03QON, p. 1.

2.81 APRA told the committee that there is a cap in the legislation that sets the maximum value of the levy. It explained that 'in this particular case, at this point, the major banks are paying, at the maximum level, one component of the levy, and therefore that cost is being distributed elsewhere through the system'.[97]

2.82 The committee asked how this was being resolved. APRA advised the committee that the 'issue is being discussed with Treasury with a view to remedying that situation' but that 'it's really in the hands of Treasury'. APRA explained that 'the caps are in legislation, so we need some legislation to be amended to have that issue addressed'.[98] APRA told the

94 Mr Wayne Byres, Chair, APRA, *Transcript*, 9 August 2019, p. 13.

95 APRA, 'Industry fees and levies', https://www.apra.gov.au/industry-fees-and-levies, accessed 18 February 2020.

96 APRA, *Response to question on notice*, APRA03QON, p. 1.

97 Mr Wayne Byres, Chair, APRA, *Transcript*, 9 August 2019, p. 13.

98 Mr Wayne Byres, Chair, APRA, *Transcript*, 9 August 2019, p. 13.

committee that Treasury commenced an industry consultation in August 2019 'to address, among other things, some of the perceived imbalance of the relative distribution of levy burden across different sized institutions within the industry'.[99]

Cyber resilience

2.83 The Capability Review noted that, 'internationally, prudential regulators identify cyber-risk as a top-tier priority'. It advised that 'APRA should have a leadership role supporting development of the financial sector's cyber defences and supporting broader efforts at a national level'. The Capability Review found that 'while APRA has made some contribution to date its capability in this area is behind leading peers'.[100] Professor Samuel explained that:

> The issue of cyber-risk goes into the whole area of crisis management. It is a matter that APRA is aware of but has tended to defer putting resources into or paying close attention to for some time. This is essential; it's got to be done. It is not something that APRA can do on its own. It needs to be done in conjunction with other government agencies, and potentially with some of its major regulated institutions, like the major banks.[101]

2.84 In July 2019, APRA published *Prudential Standard CPS234 Information Security*. It aims to 'ensure that an APRA-regulated entity takes measures to be resilient against information security incidents (including cyberattacks) by maintaining an information security capability commensurate with information security vulnerabilities and threats'. The standard requires APRA-regulated entities to:

- clearly define the information security-related roles and responsibilities of the Board, senior management, governing bodies and individuals;
- maintain an information security capability commensurate with the size and extent of threats to its information assets, and which enables the continued sound operation of the entity;
- implement controls to protect its information assets commensurate with the criticality and sensitivity of those information assets, and undertake

99 APRA, *Response to question on notice*, APRA03QON, p. 1.

100 Treasury, *APRA Capability Review*, July 2019, pp. 65-66.

101 Professor Graeme Samuel, Chair, APRA Capability Review Panel, *Transcript*, 11 September 2019, p. 8.

systematic testing and assurance regarding the effectiveness of those controls; and

- notify APRA of material information security incidents.[102]

2.85 APRA noted that the standard applies to both the firms it regulates and the partners that they use. It explained that vulnerabilities 'often occur at the point where firms are using third-party providers who have information assets for them'. APRA advised that this 'is an area of focus for us as supervisors'.[103]

2.86 APRA told the committee that it is improving its cybersecurity capability. It explained that APRA currently has approximately 10 specialists working in cybersecurity and that it plans to increase this number. APRA advised that it is extending its partnerships with other government agencies that have specialist expertise in cybersecurity as well as cooperating and collaborating with its international peers.[104]

2.87 APRA acknowledged that these are 'positive and important steps in lifting the cyber resilience of the financial system'; however, it cautioned that 'it also needs to be acknowledged that the current regulatory framework is not designed for clouds, ecosystems and partnership models'. APRA explained that:

> Not only do regulators need new skills, resources and partnerships, but possibly new powers to ensure that as critical functions and data move outside the regulatory perimeter, we are able to satisfy ourselves that the requisite level of safety and control remain in place. As we develop our new cyber supervision strategy, we will need to consider how best to tackle these issues.[105]

Superannuation

2.88 The Capability Review found that 'despite an increasing focus on member outcomes, APRA's progress has been insufficient, especially in relation to system efficiency, fees and transparency'.[106] The Capability Review made

102 APRA, *Prudential Standard CPS234 Information Security*, July 2019, p. 1.

103 Mr Geoff Summerhayes, Member, APRA, *Transcript*, 9 August 2019, p. 12.

104 Mr Geoff Summerhayes, Member, APRA, *Transcript*, 9 August 2019, p. 11.

105 Mr Wayne Byres, Chair, APRA, *Opening Statement to the House of Representatives Standing Committee on Economics*, 2 December 2019.

106 Treasury, *APRA Capability Review*, July 2019, p. 102.

three recommendations to further embed and reinforce APRA's focus on member outcomes, including that APRA create a new Superannuation Division under a dedicated Executive General Manager with a primary focus on member outcomes and that APRA publish objective benchmarks on product performance.[107]

2.89 In April 2019, the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019* granted APRA stronger powers to take action against the trustees of underperforming superannuation funds.

2.90 APRA explained that the legislation grants it a broad directions power as well as giving it the power to take civil penalty action against trustees and their directors for breaching their obligations to members, including the duty to act in the best interests of members. The legislation also requires trustees to conduct an annual outcomes assessment against a series of prescribed benchmarks and enhances APRA's power to refuse, or to cancel, a MySuper authorisation.[108]

2.91 APRA stated that the 'legislation significantly strengthened [its] ability to drive trustees towards improved outcomes for members and to address underperformance at an early stage'. It explained that the new directions power gives APRA the ability to intervene at an early stage before members suffer significant harm.[109]

2.92 The new civil penalties that may be imposed on directors for breaches of their section 52 and 52A duties[110] will attract both civil and criminal consequences. APRA advised that 'this, combined with the broader directions power, gives APRA much greater leverage to influence trustee behaviour from the outset and to push trustees to meet their obligations to members under the law'.[111]

2.93 APRA stated that 'these reforms supported APRA's increased focus on the outcomes trustees across all superannuation sectors were delivering for their members', and cautioned that:

107 The Treasury, *APRA Capability Review*, July 2019, p. xv.

108 APRA, 'New superannuation powers to help APRA weed out underperforming funds', *Media Release*, 4 April 2019.

109 APRA, 'New superannuation powers to help APRA weed out underperforming funds', *Media Release*, 4 April 2019.

110 *Superannuation Industry (Supervision) Act 1993* (Cth).

111 APRA, 'New superannuation powers to help APRA weed out underperforming funds', *Media Release*, 4 April 2019.

> All trustees, including those with strong recent financial performance, need to avoid complacency and be proactive in ensuring they continue to meet their obligations to members into the future. APRA will ensure this occurs by targeting underperforming funds, holding the industry to account through enhanced transparency measures, and using our strengthened powers when needed.[112]

2.94 APRA advised the committee that it has moved to its new organisational structure, which includes a division dedicated to superannuation, and is led by Executive Director, Ms Suzanne Smith.[113]

Fees

2.95 The committee noted that the Productivity Commission's report *Superannuation: Assessing Efficiency and Competitiveness* found evidence of 'excessive and unwarranted fees in the super system' and that 'reported fees have trended down but a tail of high-fee products remains entrenched'.[114]

2.96 The committee asked if APRA considered fees in superannuation to be too high. APRA told the committee that 'there is scope for fees and costs in the Australian superannuation system to be reduced, and achieving this is a key component of our supervision focus on enhancing member outcomes for superannuation members'.[115] When asked what a reasonable level of management costs in superannuation would be, APRA responded:

> I don't think you can have a single number for that; you need to look at the components of costs and you need to understand the value that's being provided by the expenditure that's incurred and whether that's reasonable. If, for example, investing in assets that have a higher cost but deliver a better return gives a better outcome for members ultimately on a net basis, then that's a good thing. So I think it's simplistic to try and reduce the level of expenditure to a single metric.[116]

112 APRA, 'New superannuation powers to help APRA weed out underperforming funds', *Media Release*, 4 April 2019.

113 Mr Wayne Byres, Chair, APRA, *Opening Statement to the House of Representatives Standing Committee on Economics*, 2 December 2019.

114 Productivity Commission, 'Superannuation: Assessing Efficiency and Competitiveness', *Productivity Commission Inquiry Report No. 91*, December 2018, p. 2.

115 APRA, *Response to question on notice*, APRA02QON, p. 1.

116 Mrs Helen Rowell, Deputy Chair, APRA, *Transcript*, 9 August 2019, p. 9.

2.97 The committee asked if APRA agreed with the Productivity Commission's finding that 'higher fees are clearly associated with lower net returns over the long term'.[117] APRA told the committee that it is important to differentiate administration costs and higher investment costs[118] and explained that analysing the relationship between fees and returns is complex:

> …it is important to be clear on the nature and components of fees that are included in any analysis of the relationship between fees and returns, to ensure like for like comparisons are made. Similarly, it is also important to consider the level at which any such analysis is undertaken (i.e. whether it is at a fund, product, asset class or other level) in order to understand the conclusions that can be drawn from it.[119]

2.98 APRA advised that 'there is a correlation, and our data certainly shows a correlation, between higher-risk investment strategies and delivering higher returns, and often those higher-risk investment strategies involve higher investment costs'. However, it noted that 'there's no clear correlation between higher administration costs and higher net outcomes'.[120]

2.99 APRA acknowledged that 'high-fee products and options are certainly of concern' and told the committee that it has been working to ensure that 'all trustees look at their offerings and the different elements of those offerings in terms of net returns, fees, insurance et cetera with a view to identifying where there are outliers in terms of costs or poor performance and addressing that'.[121]

2.100 APRA told the committee that its 'expectation is very much that those high-fee products are being dealt with, and they are'. APRA explained that 'action on the underperforming tail is well in train' and advised that:

> There has been legislation passed. APRA has a prudential standard out that requires trustees to address the outcomes being delivered; we are proactively supervising that. In the last 18 months we have worked very hard with a cohort of close to 30 funds to either have them exit or improve their outcomes. We've

117 Productivity Commission, 'Superannuation: Assessing Efficiency and Competitiveness', *Productivity Commission Inquiry Report No. 91*, December 2018, p. 54.

118 Mrs Helen Rowell, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 16.

119 APRA, *Response to question on notice*, APRA02QON, p. 1.

120 Mrs Helen Rowell, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 16.

121 Mrs Helen Rowell, Deputy Chair, APRA, *Transcript*, 9 August 2019, p. 14.

> seen significant consolidation in the superannuation industry over the last five years, which has removed a number of underperforming funds, and that's going to continue.[122]

Heatmap

2.101 In December 2019, APRA published the MySuper Product Heatmap (heatmap).[123] APRA told the committee that the heatmap is intended to 'bring greater transparency to the performance of trustees' and 'provide important information on the outcomes being delivered by every MySuper product'. APRA described this initiative as 'a major leap forward in transparency and accountability in the superannuation industry'. It explained that:

> Our goal with the heatmap is simple: to help drive better member outcomes by shining the light on those MySuper products that need to improve. For the past couple of years, we have been focused on using data to weed out the under-performers in the industry. We have seen reductions in costs and, in some cases, changes of trustee as a result. However, when coupled with new regulatory powers and penalties provided by the Parliament earlier this year, our heatmap means APRA is now much more well-equipped to take these efforts to a whole new level.[124]

2.102 APRA also advised that, in addition to the heatmap, it has launched a multi-year project to upgrade the breadth, depth and quality of its superannuation data collection. APRA explained that its 'Superannuation Data Transformation project aims to help deliver better industry practices and improve member outcomes by significantly enhancing the comparability and consistency of reported data'.[125]

Methodology

2.103 The committee questioned APRA's methodology for the heatmap, noting that some concerns had been raised regarding APRA's approach. APRA advised that the heatmap was developed internally and reviewed externally by experts—Mr David Bell, Rice Warner, and Deloitte.[126] APRA

122 Mrs Helen Rowell, Deputy Chair, APRA, *Transcript*, 9 August 2019, p. 15.

123 APRA, 'APRA publishes MySuper heatmap', *Media Release*, 10 December 2019.

124 Mr Wayne Byres, Chair, APRA, *Opening Statement to the House of Representatives Standing Committee on Economics*, 2 December 2019.

125 Mr Wayne Byres, Chair, APRA, *Opening Statement to the House of Representatives Standing Committee on Economics*, 2 December 2019.

126 APRA, *Response to question on notice*, APRA17QON, p. 1.

noted that it also engaged informally with various stakeholders to test ideas and thoughts regarding its approach.[127]

2.104 APRA told the committee that the heatmap 'contains 21 metrics covering the areas of investment returns (member returns), fees and costs, and the sustainability of member outcomes'. In relation to the investment return metrics, APRA advised that 'the heatmap covers net returns, net investment returns, and net investment returns relative to a simple reference portfolio and a listed strategic asset allocation benchmark portfolio'. APRA noted that 'these metrics cover both three and five year returns'.[128]

2.105 The committee raised concerns regarding the inherent complexity of superannuation and the complexity of the heatmap in light of ASIC's recent findings on the limits of disclosure.[129] APRA explained that the heat map is targeted at informed stakeholders. It noted that, when the heatmap is viewed, its default view shows a subset of 'the most important' columns to focus on to 'give a clearer, simpler snapshot', while also providing the option to view additional or more detailed information.[130]

2.106 APRA emphasised that trustees are the 'core audience' for the heatmap:

> The key readers of the heat map, the most avid readers of the heat map, should be trustees. They're the ones with the statutory obligation to act in the best interests of their members. And, if they are looking at themselves glowing red, then they've really got to be asking themselves some serious questions about: 'Are we doing our job well enough?'…So, yes, advisors, yes, consumers, maybe with some help, but I think actually our core audience is the trustees themselves because this really ups the ante on trustees.[131]

Data

2.107 The committee asked where APRA sourced its fee data for the heatmap. APRA explained that the fee data is reported to APRA as part of its regular reporting collection. APRA advised that the heatmap uses the standard fee that an ordinary MySuper member would pay in the product; it does not include discounts. APRA told the committee that it uses two different fee measures in the heat map—administration cost measure and

127 Mrs Helen Rowell, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 14.

128 APRA, *Response to question on notice*, APRA06QW, p. 1.

129 ASIC, *REP 632: Disclosure: Why it shouldn't be the default*, October 2019.

130 Mrs Helen Rowell, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 17.

131 Mr Wayne Byres, Chair, APRA, *Transcript*, 2 December 2019, p. 18.

total cost measure. It advised that the total cost measure includes indirect costs.[132]

2.108 The committee asked whether the performance of life cycle funds is the weighted average of the performance of individual stages. APRA advised that it 'will be publishing information at an aggregated basis, which is that weighted number based on the time that members would spend in the different stages' as well as 'separately publishing information for each life cycle stage'. APRA explained that:

> Each life cycle product has different stages that have different risk return profiles and sometimes different fees, so we will have a separate line in the heat map for each of those separate stages—for, say, the 25- to 35-year-old, the 36- to 45-year-old et cetera—and then we'll also be rolling that up into an overall life cycle product number.[133]

2.109 The committee noted concerns that the timeframes considered by the heatmap are too short and asked whether APRA plans to extend the heatmap to include longer-term returns (seven and 10-year returns). APRA told the committee that its 'objective would be to extend the heat map to include longer time periods as longer data becomes available', noting that 'these are MySuper products…MySuper hasn't been around for 10 years, so there's a limit to what we can accurately produce'.[134]

2.110 The committee asked whether APRA intends to extend the heatmap to choice options, noting concerns that this may be more difficult to accurately compare than MySuper options. APRA confirmed that it is 'proposing to extend the heat map to choice products and options' and has commenced consultation on the data collection. APRA explained that:

> The range and number of choice options that are out there and how they're constructed is far more complex than we see in the MySuper space. You have everything from single asset class to mixed asset class to even individual share options and platforms. So how you construct or collect all of that data and then how you construct appropriate benchmarks for measuring the performance of all of those different options does create some complexity that we will need to work through, but we think it's achievable. It's as much a case of actually having the right data and the right

132 Mrs Helen Rowell, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 13.

133 Mrs Helen Rowell, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 13.

134 Mrs Helen Rowell, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 16; Mr Wayne Byres, Chair, APRA, *Transcript*, 2 December 2019, p. 16.

> information and doing the work. We think it's really important to do.[135]

Underperformance

2.111 APRA told the committee that no particular metric or measure of performance alone can show whether a product is underperforming. It explained that if a product is red in one metric it does not necessarily mean that it is underperforming, but that if it is red across a range of metrics it indicates that there are 'some serious issues to think about'.[136]

2.112 APRA advised that there are two main groups of 'underperformers' identified by the heatmap. Those that 'are looking really quite poor across a number of dimensions', which comprise approximately 20 of the 96, and a similarly sized group that are not doing as poorly but which still have some issues that need to be improved.[137]

2.113 The committee noted that there is a large group of underperformers and asked APRA what its next steps are with regards to addressing underperformance in the sector. APRA advised that it is engaging with underperforming entities to 'try and get them to improve'. It explained that:

> …it's also important to note that we see this very much as informing all trustees, and we want all trustees to use this. Coupled with our member outcomes, standard and the implementation of the outcomes legislative assessment and the business performance review, all the trustees need to be looking at how they do better. So, yes, we will particularly emphasise the underperformers and get them to lift or exit, but we're also very keen to see all trustees look at whether they can improve their fees, whether they can improve their investment performance and whether they can improve their insurance et cetera to deliver better outcomes for members.[138]

2.114 APRA advised that if performance does not improve, 'ultimately we can remove them as trustee or take other enforcement action'. APRA told the committee that it engages with and clearly communicates to underperforming entities that they need to take action to improve. It

135 Mrs Helen Rowell, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 17.
136 Mr Wayne Byres, Chair, APRA, *Transcript*, 2 December 2019, p. 18.
137 Mrs Helen Rowell, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 18.
138 Mrs Helen Rowell, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 18.

explained that APRA expects to see meaningful improvement from underperformers in a period of six to 12 months:

> The time frame for addressing the issues will depend on what the nature of the issues is. Fees can be changed relatively quickly. For investment performance, you need to allow some time for a revised strategy. We're talking about a pretty limited time. It's more about the nature of the response: do they get it? Are they acting? Are they committed?[139]

2.115 The committee asked whether APRA has undertaken analysis regarding the logistics and challenges of funds potentially being closed or merging. APRA told the committee that most of the impediments or barriers to merges are 'manageable'. It advised that one of the industry's key concerns regarding mergers is the capital gains tax implications. APRA explained that the extension of the capital gains tax exemption for successor fund transfers (SFTs) is 'a key priority to make sure that, post June-2020, mergers can happen without capital gains tax implications'.[140]

2.116 The committee asked whether APRA is concerned about a run on super funds, resulting from people moving their money out of low-performing funds and into high-performing funds. APRA advised that is has considered this possibility but thinks that it is 'manageable'. It explained that:

> We're going through the process with the entities in terms of engagement and making sure they have action plans in place and are ready to communicate with their members and any concern about members switching from one fund to another is manageable. We've also made it very clear in our communication, and will continue to make it very clear in our communication, that the heat maps are one source of information; they are not meant to be used as the only source of information for making decisions about which product or which entity to be in from a superannuation perspective. So, again, whilst having members choose to move to a different fund that gives better performance is a good thing, I don't think we need to be concerned about significant liquidity issues as a result.[141]

139 Mrs Helen Rowell, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 20.

140 Mrs Helen Rowell, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 18.

141 Mrs Helen Rowell, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 15.

IOOF case

2.117 In December 2018, APRA commenced a number of actions against IOOF entities, directors, and executives 'for failing to act in the best interests of superannuation members'. It commenced disqualification proceedings and sought to impose additional licence conditions and issue directions to APRA-regulated entities in the IOOF group.[142]

2.118 In September 2019, Jagot J ruled that 'none of APRA's claims of contraventions of the SIS Act[143] against the respondents are sustainable with the consequence that there is no foundation for the making of any disqualification orders and the further amended originating application should be dismissed'.[144] In October 2019, APRA stated that it will not be seeking to appeal the decision.[145]

2.119 The committee asked APRA to comment on Jagot J's findings regarding the use of funds from the Operational Risk Financial Requirement reserve (ORFR) to compensate members. In the case, APRA had argued that the ORFR 'should only be used where the superannuation entity's primary controls had failed to avoid the impact of the operational risk on beneficiaries, that is, where the trustee could not compensate the beneficiaries from moneys other than reserve moneys by making a claim on its insurance policy or enforcing its contractual rights against service providers'.[146]

2.120 However, Jagot J found that APRA's statements 'were not supported by anything in the statutory scheme and go too far'. Jagot J stated:

> It is not the case that the use of the ORFR without "exhausting other means of risk management" is necessarily not in the best interest of beneficiaries. This proposition appears to be central to APRA's case yet it is not founded in the statutory scheme or any principle of trust law which APRA has identified. It is a manifestation of APRA's construct that there is a duty rather than a discretion to make claims against potentially liable entities for loss. I do not accept the construct as a matter of principle.[147]

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142 APRA, 'APRA takes action against IOOF for failing to act in best interests of superannuation members', *Media Release*, 6 December 2018.

143 *Superannuation Industry (Supervision) Act 1993* (Cth).

144 *APRA v Kelaher* [2019] FCA 1521, [7].

145 APRA, 'APRA to not appeal IOOF judgement', *Media Release*, 17 October 2019.

146 *APRA v Kelaher* [2019] FCA 1521, [123].

147 *APRA v Kelaher* [2019] FCA 1521, [124].

2.121 APRA told the committee that it maintains its expectation that ORFR should be 'called on only after other avenues have been reasonably explored'. It explained that 'the case has highlighted some issues and some different interpretations of what we think the expectations and requirements are; we need to look at that and decide whether we need to change our prudential standards or clarify those expectations more formally'.[148]

Unlisted assets

2.122 The committee asked APRA to comment on super funds engaging in the purchase of unlisted assets and the risks associated with the pricing structures around unlisted assets. APRA advised that *SPG 531 Valuation* provides regulatory guidance on superannuation funds' valuation frameworks, including unlisted assets.[149]

2.123 APRA told the committee that it reviews activities such as the purchase of unlisted assets as part of its ongoing supervision engagement and has 'requirements and we monitor to make sure those requirements are being followed'. APRA explained that it has 'market and investment risk specialists, which forms part of our expertise that we take out on site, to look at valuation practices and approaches to managing material, illiquid and infrastructure investments'.[150]

2.124 APRA advised that, over the past five years, its ongoing supervision has included conducting on-site reviews to assess the adequacy of the trustees' investment governance frameworks, one area of which is the valuation framework. It explained that these valuation framework reviews focus on unlisted asset valuations and encompass the key areas outlined under SPG 531, which includes an assessment of the adequacy of the following:

- valuation policy;
- reasonableness of valuation methodologies;
- independence of valuations, including the use of independent external valuation;
- valuation checks;
- frequency of valuation;

148 Mrs Helen Rowell, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 22.

149 APRA, *Response to question on notice*, APRA18QON, p. 1.

150 Mrs Helen Rowell, Deputy Chair, APRA, *Transcript*, 2 December 2019, p. 22.

- audit reviews;
- oversight and review of valuations, including protocols for resolving valuation issues; and
- review of valuation policy.[151]

2.125 APRA explained that its valuation framework reviews result in APRA issuing requirements or recommendations to be addressed where the need for improvement in practices is identified. APRA told the committee that, during the period of 2015-19, its specialist Investment Risk team was involved in assessing unlisted asset valuation issues as part of investment governance reviews performed for 17 superannuation entities. The key themes of the review findings included:

- the need for improvement in the valuation policy and control framework (for example, closer alignment of the policy with SPG 531 and clarification of the scope/coverage of the framework);
- the need for additional assurance around the robustness of the unlisted asset valuations; and
- valuation monitoring considerations (including the suitability of revaluation cycles and triggers, review of external valuations, escalation processes in the event of disputes or other issues, and identification and rectification of valuation control issues and mitigants against member arbitrage).[152]

Climate risk

2.126 In March 2019, APRA published *Information Paper: Climate change: Awareness to action*. The paper provides insights regarding the activities and strategic responses that entities are adopting to assess and mitigate climate risks. In the paper, APRA advises that 'in recognising the global transition towards action, APRA's supervision activities will be enhanced, as the assessment of climate change risks is integrated into ongoing supervision activities' and that 'APRA expects to observe continuous improvement in the awareness and action of regulated entities'.[153]

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151 APRA, *Response to question on notice*, APRA18QON, p. 1.

152 APRA, *Response to question on notice*, APRA18QON, p. 1.

153 APRA, *Information Paper: Climate change: Awareness to action*, March 2019, p. 4.

2.127 The committee questioned how APRA was assessing climate risk and questioned whether APRA had the internal capacity to do so. APRA advised that it is assessing whether or not firms have undertaken a 'thorough, diligent risk assessment' with regards to climate change. It explained that:

> Between ASIC, the RBA and APRA, we are now starting to think about scenario analysis and stress testing of firms on different warming trajectories. There are three broad models emerging: a hothouse world, where there is no discernible change to the warming profile; an orderly adjustment to a lower-carbon future, which would envisage a significant amount of transition risk, albeit smooth; and a late adjustment where the world continues to warm and there is a realisation from a policy sense much later in the piece which requires a very rapid adjustment to a lower-carbon future. Each of those scenarios has implications for the pricing of assets, for business models and for physical impacts and liability impacts to a range of firms' investments—both provision of credit insurance and, in your case, investments that firms are making in trustees from a superannuation perspective. We are looking for models, rigour and understanding on those issues. There is a range of expertise which firms can engage on those particular areas, but APRA is not prescribing the expertise.[154]

2.128 The committee asked how APRA was conducting the stress testing. APRA advised that it has already done some stress testing in insurance in climate risk and explained that:

> …the emerging discipline of central banks and regulators globally is to project a zero carbon 2050 scenario, and then to model the transitions that would have to occur within economies to hit that and what the implications would be for assets and business models going forward. That would lead to repricing of assets and have implications for the values of investments that firms hold.[155]

Conclusion

2.129 The Royal Commission found that Australia's financial sector suffered from a lack of moral leadership and a corporate culture motivated by

154 Mr Geoff Summerhayes, Member, APRA, *Transcript*, 2 December 2019, p. 21.

155 Mr Geoff Summerhayes, Member, APRA, *Transcript*, 2 December 2019, p. 21.

greed. Evidence provided to the Royal Commission exposed shocking and widespread examples of misconduct and highlighted systemic failings throughout the banking and financial services sector. Revelations of further misconduct have continued to come to light, following the conclusion of the Royal Commission.

2.130 The Royal Commission demonstrated a clear need to strengthen and empower financial regulators and the Capability Review showed those areas in which APRA needs to grow and build its capability. These important examinations of APRA and the broader system in which it operates have provided invaluable insights and given us the opportunity to build a better and stronger regulatory system.

2.131 The committee notes APRA's progress regarding the implementation of both the Royal Commission recommendations and the APRA Capability Review recommendations. This important work will continue to strengthen APRA as a regulator and enable it continue to ensure the raising of standards of governance, culture, remuneration, and accountability across the financial services sector.

2.132 The committee will continue to scrutinise APRA's performance; its ongoing implementation of the Royal Commission recommendations and the Capability Reviews recommendations; and the ongoing strengthening of APRA's capability. In particular, the committee will follow APRA's implementation of a BEAR-like system of greater accountability within APRA as it seeks to improve its leadership and culture.

Mr Tim Wilson MP
Chair
26 February 2020

A

Appendix A — Hearing and witnesses

Public hearing

Friday, 9 August 2019 – Canberra

Australian Prudential Regulation Authority

Mr Wayne Byres, Chairman

Mr John Lonsdale, Deputy Chair

Mrs Helen Rowell, Deputy Chair

Mr Geoff Summerhayes, Member

Mr Warren Scott, General Counsel

Wednesday, 11 September 2019 – Canberra

Private capacity

Professor Graeme Samuel AC

Monday, 2 December 2019 – Canberra

Australian Prudential Regulation Authority

Mr Wayne Byres, Chairman

Mr John Lonsdale, Deputy Chair

Mrs Helen Rowell, Deputy Chair

Ms Suzanne Smith, Executive Director, Superannuation

Mr Geoff Summerhayes, Member

Mr Warren Scott, General Counsel

B

Appendix B — Government and APRA responses to Capability Review recommendations

#	Recommendation	Government response	APRA response
2.1	Building upon APRA's strategic initiative to enhance 'leadership, people and culture', APRA Members should address variation in leadership capability for all management levels. This should include a priority focus on leading change, effective execution and accountability. In addition, APRA should develop a cultural change program that fosters internal debate and contestability.		APRA supports this recommendation. APRA will build on its existing leadership, people and culture strategic initiatives to address these areas as part of its review of the Corporate Plan, which will be published in August 2019.
2.2	APRA should set transparent standards to hold staff and itself accountable for the timeliness of approvals and other commercially-important decisions for regulated institutions. APRA should publicly disclose adherence rates to these performance standards in its external accountability assessment (see recommendation 6.4).		APRA supports this recommendation. APRA will review its decision-making processes and current Service Charter to address this recommendation. APRA will include information on its performance in key areas as part of its enhanced communication approach (refer to Recommendation 6.6).
2.3	APRA should revise its organisational structure to reinforce the impact of the leadership and cultural changes recommended by the Review and APRA's own strategic plans. APRA should: a. restructure supervision divisions along industry lines — banking, insurance and superannuation; b. revise management structures and levels, with a view to widening spans of control and enhancing efficiency, speed of decision-making and empowerment; c. shift internal configuration to better support industry-focussed strategic activities and more agile ways of		APRA supports this recommendation. APRA undertook a review of its organisational structure in the latter part of 2018 under the strategic initiative in APRA's 2018-2022 Corporate Plan to lift organisational capability. Implementation of changes based on that review were deferred pending the outcomes of the Royal Commission and the Capability Review. APRA is now progressing implementation of changes to its organisational structure that

#	Recommendation	Government response	APRA response
	working; and d. create distinct people-leader and technical-specialist career pathways.		support flexible and effective modes of operating and address the areas highlighted by the Capability Review. This will include review of the current roles and responsibilities of the APRA Members (refer to recommendation 2.4) and restructuring the supervisory divisions along industry lines. APRA notes that some changes to management structures and levels are contingent on the Government accepting Recommendation 2.5 (removing APRA from the APS Workplace Bargaining Policy) and/or changes to APRA's Employment Agreement.
2.4	APRA's Chair should relinquish his ADI-specific oversight role and adopt a broader organisation-wide role. The remaining Members should split their roles to include a mix of industry, policy and functional responsibilities.		APRA supports this recommendation. See response to Recommendation 2.3.
2.5	To help facilitate a number of recommendations in the Review, the Government should remove APRA from the application of the APS Workplace Bargaining Policy. APRA should engage with the Government to consider ways to enable greater variation in remuneration levels.	The Government will work with APRA and the Australian Public Service Commission to better understand and address any restrictions within the current APS Bargaining Framework in order to ensure APRA can attract and retain high skilled staff.	APRA supports this recommendation and welcomes the Government's commitment to understand and address restrictions to ensure APRA can attract and retain the staff it needs to deliver its mandate.
3.1	While lifting organisational capability across the areas identified in this Review is important and necessary, APRA should retain its long-standing and core capability of fostering financial safety and financial stability.		APRA supports this recommendation, but notes that to maintain APRA's core capabilities in financial safety and stability, while also expanding its organisational capability across all the important areas identified by the Capability Review, will require additional resources.
3.2	APRA should build credit risk capacity to simultaneously maintain high supervisory intensity in both non-retail and retail credit risk.		APRA supports this recommendation but notes that to simultaneously maintain high supervisory

#	Recommendation	Government response	APRA response
			intensity across both non-retail and retail credit risk will require additional resourcing.
3.3	Reflecting its role as an independent prudential regulator, APRA should take a more transparent and assertive role in articulating the objectives of its macro-prudential policies, the design of the instruments chosen and assessment of its impacts, including on the broader areas of its mandate. APRA should continue to develop its public communication around the extent of systemic risks, conditions required for macro-prudential actions and assessments of any actions taken.		APRA supports this recommendation. Work is underway to strengthen external engagement and communication under one of the strategic initiatives in APRA's 2018- 2022 Corporate Plan. This existing initiative will be broadened to ensure it addresses the areas highlighted by the Capability Review. APRA will publish its 2019- 2023 Corporate Plan in August 2019.
3.4	APRA should advise the Government of the current state of its resolution capability and crisis preparedness as a basis for assessing whether additional resources are required to advance this work more quickly. This should be completed by the end of 2019.		APRA supports this recommendation. APRA is strengthening its resolution capability and crisis preparedness under the strategic initiatives of the 2018-2022 Corporate Plan. APRA will provide advice to the Government by the end of 2019 on the status of this work and the additional resources needed to enable it to be advanced more quickly.
3.5	APRA should seek to build strong allegiances with public and private sector experts, other regulators and financial firms to augment its internal capacity and to collaborate on ways to strengthen the cyber resilience of APRA's regulated sectors.		APRA supports this recommendation. APRA has identified cyber and technology as priority areas for focus across all APRA-regulated industries, and is developing a cyber and technology strategy that includes building strong allegiances with public and private sector experts.
3.6	To better prepare for and respond to the consequences of digital innovation and disruption, APRA should increase its IT risk capacity and capability, including though increased collaboration and partnerships. In doing so, APRA should consider the implications of new business models, management and transformation of legacy IT landscapes, greater reliance on third-party providers (for example, cloud providers), and technology-enabled competition.		APRA supports this recommendation, but notes that increasing IT risk capacity and capability will require additional resourcing.
3.7	To support its consideration of competition, APRA should: a. create a competition champion within APRA, preferably at Member level. Their role should be to ensure that issues of competition are embedded effectively across all areas of APRA;		APRA supports the objective of this recommendation. All APRA Members have overarching responsibility for achieving APRA's mandate, including consideration of competition, efficiency,

#	Recommendation	Government response	APRA response
	b. ensure that there is sufficient tension in the internal debate and analysis of competition. It should test how policies are developed and applied by supervisors. This could be done in the Quality Assurance function and reported to the competition champion; and c. report regularly on competition developments in its external accountability assessment (see recommendation 6.4).		contestability and competitive neutrality. APRA will review and enhance its decision-making processes to more actively champion the consideration of all elements of APRA's mandate. APRA will strengthen its engagement and collaboration with the ACCC, as part of its strategic initiative in the 2018-2022 Corporate Plan. APRA will include information on its performance in this regard as part of its enhanced communication approach (refer to recommendation 6.6).
4.1	As part of its work to revise and enhance its supervisory and policy frameworks, APRA should: a. ensure the policy framework is focussed on assessing appropriate outcomes around GCA risk in regulated entities, not just appropriate processes; b. further develop its toolkit for assessing GCA risks, including board and senior management performance, and ensure that it has an escalating suite of options for engaging with entities; c. embed the recent entity self-assessment process into its more intense supervision of GCA risks by making it a biennial requirement. The self-assessments should be more prescriptive than APRA's recent program, including coverage of questions set out in Appendix 2. The self-assessments, APRA's assessment of each of them, APRA's thematic reviews, and any rectification requirements imposed by APRA in response to a self-assessment should be published; d. establish an external panel of experts to assist it in undertaking more in-depth assessments of individual entities; and e. explore ways to collaborate with regtech specialists and other experts to develop more efficient and effective tools to identify GCA risks.		APRA supports this recommendation. Issues of governance, culture, remuneration and accountability are priority areas for APRA. APRA is reviewing its program of work to enhance its regulatory and supervisory approach in these areas, following the Government's announcement of additional funding as part of the 2019-20 Commonwealth Budget. The Capability Review will inform this. Developing an enhanced regulatory and supervisory framework is a multi-year program of work and APRA will publish its strategy by end 2019.
4.2	APRA should build on the CBA Prudential Inquiry and entity self-assessments by embedding CBA-style prudential inquiries as an ongoing part of its supervisory toolkit. The Panel would expect to see several prudential inquiries in the first few years to reinforce the need for rigorous self-assessments (see recommendation 4.1). In time, the inquiries should involve		APRA supports this recommendation. APRA will consider as part of its broader response to Recommendation 4.1 how similar reviews can be incorporated into its work plan. Given the significant cost of such reviews, the precise number of reviews will be dependent on overall

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	retail and industry superannuation, insurance and ADI entities.		resourcing.
4.3	The Government should consider providing APRA with a non-objections power to veto the appointment or reappointment of directors and senior executives of regulated entities. This would bring it into line with international regulators and strengthen its capacity to pre-emptively regulate GCA risks. The power should be available to APRA only where the risks associated with the entity, including but not limited to member outcomes for superannuation funds, warrant it.	The Government will ensure that APRA has sufficient powers and flexibility to prevent inappropriate directors and senior executives from being appointed or re-appointed to regulated entities, as part of extending the Banking Executive Accountability Regime;	APRA supports the objective of a strong regime for the fitness and propriety of directors and senior executives, but notes that ultimately this is a matter for Government. APRA will engage with the Government on how the objectives identified by the Capability Review can best be achieved, noting the potential for moral hazard and administrative burden.
5.1	APRA should create a new Superannuation Division, headed by an Executive General Manager. A key focus of the Division should be the overall performance of the superannuation system for members.		APRA supports this recommendation. This will be implemented as part of APRA's response to Recommendation 2.3.
5.2	APRA should embed and reinforce its increasing focus on member outcomes, and continue to ensure that trustees prudently manage member funds. Consistent with this change of approach, APRA should: a. publish objective benchmarks on product performance and publicly take action to demonstrate its expectations for member outcomes; b. develop a superannuation performance tool that replaces PAIRS by the end of 2019. The tool should be focussed on member outcomes; c. update its superannuation reporting standards and collect product level data that facilitates accurate assessments of outcomes and comparability across funds; and d. increase the resourcing dedicated to the superannuation industry.		APRA supports this recommendation. APRA will build on its work in recent years which was provided further impetus with the passing of the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation) Act 2019. APRA's work on performance benchmarking and data collection will be a priority, and should be aligned with other initiatives that require legislation (such as choice product dashboards). APRA's program of work to review its supervisory model, initiated under APRA's 2018-22 Corporate Plan, includes a revised PAIRS model by mid-2020. APRA will consult with

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			Government on the additional resources needed.
5.3	In accordance with recommendation 23 of the Productivity Commission's Superannuation Inquiry, the Government should legislate to make APRA's member outcomes mandate more explicit. The Government should clearly outline its expectations for APRA on superannuation in its next Statement of Expectations.	The Government will outline its expectations for APRA on superannuatio n in its next Statement of Expectations	APRA supports its member outcomes mandate being clear. This was recently achieved through the Treasury Laws Amendment (Improving Accountability and member Outcomes in Superannuation) Act 2019. APRA supports the Government further clarifying its expectations through the Statement of Expectations.
6.1	The Panel supports the direction of the APRA Enforcement Strategy Review. To effectively embed the Enforcement Approach, APRA should change its existing internal norms that create a low appetite for transparent supervisory challenge and enforcement by: a. departing from its behind closed doors approach with regulated entities; b. adopting a stronger approach towards recalcitrant institutions; c. building organisational confidence and improving management support; and d. increasing its risk appetite and use of the escalation toolkit.		APRA supports this recommendation. APRA is implementing the revised Enforcement Approach that was released in April 2019. This program of work will be included in APRA's 2019-2023 Corporate Plan to be published in August 2019.
6.2	While APRA's regulatory tools are generally fit-for-purpose, the Government should consider: a. reviewing the adequacy of penalties across APRA's legislative framework; b. providing APRA with the power to appoint a skilled person to undertake a review of a regulated entity; and c. enhancing its private health insurance licensing powers.	The Government will consider changes to APRA's regulatory framework including a review of penalties, amending its private health insurance licensing powers and providing APRA with the power to appoint a person to undertake a review of a regulatory entity;	APRA supports this recommendation, but ultimately it is a matter for Government. This recommendation builds on the matters identified in APRA's Enforcement Review and APRA welcomes the Government's commitment to consider review of these areas.
6.3	APRA should reinvigorate its approach to collaboration and information sharing with regulators and its international peers including clear protocols for staff.		APRA supports this recommendation. Strengthening collaboration and cooperation with peer regulators was identified as a priority in APRA's 2018-2022

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			Corporate Plan. APRA-ASIC engagement is a current priority, with new protocols established for senior executive coordination, and a revised MoU to be published by end 2019. From 1 August 2019, APRA is establishing a new Regulatory Affairs Unit to strengthen cross-agency cooperation.
6.4	APRA should use its existing external accountability framework more effectively, including a more assertive use of the Statement of Intent and it should publish a regular external accountability assessment.		APRA supports this recommendation. APRA will publish a review of its activities and performance at the end of 2019. This is part of the work underway in response to recommendation 6.6.
6.5	The Government should consider streamlining and improving the effectiveness of existing accountability arrangements when establishing the financial regulator oversight authority.	The Government will, in establishing the Financial Regulator Oversight Authority, streamline and improve the effectiveness of both APRA and ASIC's accountability arrangements.	APRA supports this recommendation and welcomes the Government's commitment to seek to streamline and improve the effectiveness of APRA's accountability arrangements.
6.6	APRA should take a more strategic, active and forceful approach in its public communications. As an independent regulator, it should use public communications to shape community and government expectations of it. In relation to specific areas, APRA should: a. publish an interpretation of its mandate; b. clearly articulate its role and approach to macro-prudential policy (see recommendation 3.3); c. advise the Government of the current state of its resolution capability and crisis preparedness (see recommendation 3.4). Taking account of the impact on the market, part of this advice could be published; and d. be more transparent in relation to superannuation, including by publishing objective benchmarks for superannuation performance on member outcomes and a strategy to promote long-term industry performance.		APRA supports this recommendation. Work is underway to enhance communications as a strategic priority from APRA's 2018-2022 Corporate Plan. Existing initiatives will be strengthened in this year's plan to address this recommendation. APRA will publish its updated Corporate Plan by end August 2019, and publish other material relevant to this recommendation as part of its enhanced strategic communication plan.

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Source APRA, APRA's responses to Capability Review Report, 17July 2019, <https://www.apra.gov.au/apras-response-capability-review-report>, accessed 26 August 2019.