

27 July 2023

Consultation Secretariat  
Financial Regulator Assessment Authority  
The Treasury

Via email: [FRAA@treasury.gov.au](mailto:FRAA@treasury.gov.au)

Dear Secretariat

### **Draft Financial System and Regulator Metrics Framework Consultation**

COBA appreciates the opportunity to contribute to Treasury's consultation on the Draft Financial System and Regulator Metrics Framework for the Financial Regulator Assessment Authority (FRAA).

COBA is the industry association for Australia's customer owned banks (mutual banks, credit unions and building societies). Collectively, our sector has over \$160 billion in assets and is the fifth largest holder of household deposits. Customer owned banks account for around two thirds of the total number of domestic Authorised Deposit-taking Institutions (ADIs) and deliver competition and market leading levels of customer satisfaction in the retail banking market.

#### **Key points**

COBA supports the proposed Characteristics and Outcomes as useful framing devices for the development of the metrics.

COBA generally supports the proposed metrics provided in the consultation paper but expresses caution on the usage of some metrics that could be open to misinterpretation. Additionally, we think that more nuance and clarification is needed in the application of other metrics.

COBA thinks it is appropriate for the FRAA to explicitly note those metrics it considers to be the key metrics by which to gain insight on APRA's and ASIC's performance.

#### **FRAA's characteristics and outcomes of a well-functioning financial system (Question 2)**

COBA supports the Characteristics and Outcomes as provided in the Consultation Paper as appropriate framing devices for the development of the metrics. The one comment we make in response to Question 2 of the Consultation Paper is that the characteristics of "Efficiency" and/or "Fairness" should make an acknowledgement of or accounting for proportionality in how the regulators develop and apply legislation.

The "Efficiency" Characteristic currently provides that the system should allocate "scarce financial resources for the greatest possible benefit" and for the "minimisation of average production costs and

innovation”.<sup>1</sup> We think that this is appropriate, however, the regulatory burden created and imposed by the regulators can directly harm the efficient allocation of scarce financial resources by increasing production cost and reducing innovation. This occurs because financial institutions are required to allocate resources towards responding to each new wave of additional regulation and away from their customers. Our members are very small comparative to the large, listed banks, meaning that when they must allocate resources to responding to new regulation it has a real cost on the business as it has to divert resources away from developing new and innovative products for their customers. This hampers competition in the market, which is one of the Outcomes of the Characteristic. Including proportionately into the Characteristic would create an accountability on the regulators to consider the broader impacts of their interventions on both smaller and larger entities.

The “Fairness” characteristic currently provides that the regulators need to act with “integrity, honesty, transparency and non-discrimination”<sup>2</sup> which we think is appropriate. However, ASIC and APRA are regulators of businesses that can differ greatly in size and in scope and it is our view that for the operations of the regulators to be “fair” then it needs to be proportionate. COBA’s members are among the smallest domestic ADIs and are often treated by the regulators in the same or a similar manner as the largest of the major banks. Considering the obvious manifest differences between our members’ businesses and those of the major banks we do not think the regulators can be considered to be acting fairly if proportionality is not included in the characteristics.

We think that proportionality needs to be added to either one or both of these Characteristics. This would ensure that when the FRAA assesses the regulators it would help ensure that they are developing legislation proportionality and in doing so are contributing to both the efficiency of the market and its fairness.

### **Draft metrics to provide insight on regulator performance (Questions 1 and 3)**

COBA generally supports the draft metrics that have been provided in the Consultation Paper. While we note the FRAA’s comments already acknowledging the difficulty in drawing conclusions on some metrics, we would like to highlight the need for the FRAA to take care in interpreting the metrics. We particularly express our caution in how certain metrics are applied as they could easily be misinterpreted or not provide a full and accurate comparison between or within sectors especially the conclusions drawn from the use of both aggregate and non-aggregate data. For example, in how the data is applied to measure regulation of our sector compared to the regulation of the major banks. Additionally, we think that some metrics need more nuance and clarification with a particular emphasis on the materiality of the data. Our commentary on the metrics is provided in **Appendix A**.

In response to Question 3 of the Consultation Paper, COBA thinks that it would be appropriate for the FRAA to explicitly note those metrics it considers to be the most helpful and direct in providing key insights on APRA’s and ASIC’s effectiveness and capability. However, we acknowledge that this may vary across sectors especially when noting that the FRAA now appears to be examining APRA on a sector-by-sector basis, for example, how APRA regulates the superannuation industry may be different to how it regulates the banking industry. This would ensure that there is a clear hierarchy provided between those metrics that are of the most use and carry the greatest weight in the FRAA’s assessment and those metrics that help inform its view but are of lesser importance.

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<sup>1</sup> FRAA, *Draft Financial System and Regulator Metrics Framework Consultation Paper* (June 2023), 11.

<sup>2</sup> *Ibid*.

We look forward to engaging with the Treasury and the FRAA on this issue and thank you for taking our views into account. Please do not hesitate to contact Robert Thomas, Senior Policy Adviser ([rthomas@coba.asn.au](mailto:rthomas@coba.asn.au)) if you have any questions about our submission.

Yours sincerely

A handwritten signature in black ink, consisting of the letters 'M' and 'N' in a stylized, cursive font, with a horizontal line underneath.

**MARK NGUYEN**  
Director – Policy

## Appendix A: COBA Comments on Specific Draft Metrics provided in Consultation Paper

Metric	Description <i>Interpretation and use</i>	COBA Comment
<b>Outcome: Markets are competitive</b>		
Aggregate net interest margin (NIM) (ADIs)	<p>The difference between interest earnings and interest expenses, expressed as a proportion of interest-earning assets aggregated for the ADI industry.</p> <p><i>Very high NIM may be an indicator of a lack of competition in a market.</i></p>	<p>COBA notes that this metrics need to be examined at an aggregate level as comparisons between NIMs between different sectors of the ADI industry are not on a like for like basis due to different funding and business models.</p> <p>We also note that NIM is important for building ADI capital reserves to continue lending, so stakeholders need to be account for this when determining what is a “very high NIM”.</p>
Share of market (top 4 banks; top 4 super funds; top 4 insurers)	<p>The percentage of a market's total assets held by the four largest firms in that industry.</p> <p><i>A higher market share of the largest entities may indicate a lack of competition in that industry.</i></p>	<p>COBA supports this metric as highly appropriate for the banking sector. The oligopoly of the major banks hinders competition in the banking market and noting their market share compared to other ADIs is highly appropriate.</p>
<b>Outcome: New entrants are able to enter financial markets efficiently while meeting entry requirements</b>		
Licensing timeliness (to decision) (ASIC)	<p>Measures how long it takes on average for ASIC to decide (i.e., reject, voluntary withdrawal or deemed withdrawal, grant or vary, refuse) a particular license.</p> <p><i>Less time taken to grant or vary/transfer a licence indicates a greater speed in licensing decision-making. It does not, however, indicate the quality of licensing decisions.</i></p> <p><i>Note that ASIC also reports against a range of licensing performance metrics addressing volume, efficiency and regulatory outcomes.</i></p>	<p>For these metrics to be of greater use, COBA thinks that it needs to be broken down into greater granular detail and to examine the timeliness in processing the differing types of licences. For example, separately measuring and examining the time it takes to grant an AFSL compared to the granting of a credit licence. By examining the timeliness of each type of licence being granted it will help provide the FRAA with insight on areas where there could be unreasonable delays or inefficiencies occurring in how the regulators approach the licensing of particular sectors or industries.</p>

Metric	Description <i>Interpretation and use</i>	COBA Comment
License applications are assessed within published service delivery / statutory timeframes (APRA)	<p>Measures time taken to make a license decision in accordance with statutory timeframes and, for all other applications, within 3 months of receiving a 'substantially complete application'.</p> <p><i>Indicates efficiency of licensing decision-making. It does not, however, indicate the quality of licensing decisions.</i></p>	
Number of licensees subject to a public complaint (i.e., a report of misconduct) or ASIC regulatory action within 2 years of licence being granted	<p>This metric is currently an ASIC pilot initiative to determine an appropriate methodology and interpretation of results and test its feasibility as a measure of licensing quality.</p> <p><i>Applications are point in time assessments. As such, this metric will need to be accompanied by a clear narrative setting out whether any of the reports of misconduct (ROMs)/subsequent investigations would have had any bearing on ASIC's licensing decision, and thus the quality of decision. Any publication of this metric (or relevant alternative) will depend on the outcomes of the pilot.</i></p>	<p>COBA believes that there should be a materiality element given not all complaints are equal. For there is a difference between there being a large volume of complaints for relatively minor matters that are resolved by information or education responses compared to a large volume of complaints concerning serious matters that need responses like revocation of licence or court action.</p> <p>For example, it would not be unreasonable for new licensees to make errors and need guidance from the regulator, which results in education outcomes to the complaints. If the volumes are primarily of these kinds of complaint, then it would not necessarily be an indication in poor decision-making by the regulator but rather indicate teething issues that can happen with new businesses. However, if there were high rates of complaints for new licensees that resulted in the licence being revoked or the regulator taking other serious actions, then this could be a better indicator of poor decision making at the regulator.</p>
<b>Outcome: Finance is available</b>		
Credit growth	<p>The annual percentage change in credit outstanding.</p> <p><i>This metric is an important measure of financial activity. Credit growth can be</i></p>	<p>COBA notes that nuance is needed in applying this metric as an increase or decrease could be occurring due to market conditions or broader economic circumstances and not due to any action or inaction of the regulator.</p>

Metric	Description <i>Interpretation and use</i>	COBA Comment
	<p><i>broken down into business, household and personal credit. The metric may also provide insights about the accessibility and sustainability of finance.</i></p>	
<p>Share of businesses that obtained debt finance by employment sizes</p>	<p>This metric breaks down both secured and unsecured debt financing by the headcount size of the company.</p> <p><i>This metric provides insight into the availability of debt finance across the financial system. Comparing debt-financed businesses by headcount can indicate where finance constraints might exist, for example smaller businesses may have less access to debt finance.</i></p>	<p>COBA seeks clarification on the coverage of this metric. The description of this metrics clarified beyond the traditional incorporated company to include other types of businesses, including sole traders, partnerships, co-operatives, and trading trust.</p> <p>Our view is that the metric will be more effective by considering all businesses rather than limiting the metric to companies. While COBA members primarily do not provide much business lending there are still instances where finance is provided by our members to smaller businesses in the form of both secured and unsecured debt, for example, in the form of credit cards or a mortgage on a family home to support the growth of a business.</p>
<p><b>Outcome: The financial system is stable</b></p>		
<p>Stress testing activities undertaken by APRA</p>	<p>Stress testing is used by APRA to provide forward-looking assessments of entities' resilience to severe but plausible downturns, and complements APRA's risk-based supervision approach.</p> <p><i>APRA actively considers stress testing in its supervisory assessments.</i></p>	<p>While COBA supports this metric, we seek to understand more about it. Does it refer to individual entity stress tests and/or industry-wide stress tests? Is it expected to cover climate vulnerability assessments? Is success the use of stress tests or the outcomes of these tests?</p>
<p>Aggregate minimum liquidity holdings (ADIs)</p>	<p>Minimum liquidity holdings (MLH) refer to assets that are highly liquid and of a very high quality with regards to marketability and credit quality. APRA requires ADIs to maintain adequate stock of MLH to cater for unexpected liquidity pressures for</p>	<p>COBA supports this metric but notes the points raised about high holdings being both an indicator of greater resilience but also potentially inefficiency.</p>

Metric	Description <i>Interpretation and use</i>	COBA Comment
	<p>fluctuations under adverse or normal operating conditions.</p> <p><i>Holdings above the set ratio should indicate greater resilience but could also indicate inefficient resource allocation.</i></p>	
Aggregate capital ratios (ADIs, Insurers)	<p>How much capital a bank/insurer has available reported as a percentage of a bank/insurers' risk-weighted assets aggregated by industry.</p> <p><i>Provides insights into the resilience of the banking and insurance sectors to shocks i.e., the more capital above the minimum requirement/regulatory capital buffers indicates greater resilience. However too much might indicate inefficiencies in capital management practices by institutions.</i></p>	COBA supports this metric but notes the points raised about high capital levels being both an indicator of greater resilience but also potential inefficiency.
<b>Outcome: Participants are confident in the financial system</b>		
Credit ratings (ADIs, insurers, sovereign debt)	<p>A credit rating is an assessment of a borrower's creditworthiness. Independent bodies known as credit rating agencies assess borrowers to determine their credit rating.</p> <p><i>Higher credit ratings may indicate greater confidence in the financial system.</i></p>	COBA believes that this metric should focus on changes in credit ratings. COBA also seeks clarification about how this metric would be constructed given ratings exist at a borrower level and other elements can influence these borrower level ratings. Due to the structure of customer owned banks our sector can be treated as an outlier for credit ratings.
The percentage change of visitors to ASIC's Moneysmart website or users who have used Moneysmart online	<p>Moneysmart is a financial literacy website aimed at Australian consumers to help them take control of their money with tools tips and guidance.</p>	<p>COBA supports this as a good metric as it will provide an effective tool to measure consumer confidence in the financial system.</p> <p>Moneysmart is a valuable tool and ASIC should continue to promote it to consumers.</p>

Metric	Description <i>Interpretation and use</i>	COBA Comment
	<p><i>Upward movement may indicate an improvement in consumer financial capability through the website providing useful information and tools. On the other hand, increased traffic could indicate increased concern about financial misconduct or uncertainty about consumers' financial circumstances; this metric could be cross referenced against consumer complaints and other relevant data.</i></p>	
<p>APRA returns all eligible deposits at ADIs declared under the Financial Claims Scheme, up to a total of \$250,000 per account holder, and for non-complex accounts, within seven calendar days</p>	<p>The Australian Government's Financial Claims Scheme (FCS) guarantees deposits of up to \$250,000 per account holder per bank. The FCS is administered by APRA, including the prompt repayment of deposits insured under the scheme.</p> <p><i>This metric signals APRA's responsiveness to financial losses incurred by insured deposit-holders, which could be an important factor in maintaining public confidence during times of financial stress.</i></p>	<p>An additional measure could be customers with over \$250,000 (the FCS insured amount) in an account with an ADI as this may indicate confidence in APRA's effectiveness.</p>
<p><b>Outcome: Market participants adhere to standards of integrity and fairness</b></p>		
<p>The share of AFCA complaints decided in favour of the consumer</p>	<p>Total determinations made in relation to complaints and determinations made in favour of the complainant.</p> <p><i>This metric complements the number of complaints made to AFCA regarding financial firms by showing the degree to which firms are failing to meet their</i></p>	<p>COBA believes that this metric should be reconsidered for a wider set of metrics regarding the external dispute resolution function.</p> <p>The AFCA data should record both the percentage made in favour of the complainant and the percentage made in favour of the financial firm. A high rate in favour of the firms and a low rate made in favour of the</p>



Metric	Description <i>Interpretation and use</i>	COBA Comment
	<p><i>obligations to their customers. Note that many AFCA complaints are resolved by agreement and do not progress to final Ombudsman or Panel decision.</i></p>	<p>complainants could indicate high adherence to the standards of integrity and fairness by the industry and vice versa.</p> <p>We also note that there should be consideration of the types of complaints that the determinations are being made on. For example, with scam-related complaints there is a blurring of where the obligations lie in these matters for in many cases the financial institution has not caused the issue but rather the complainant has. This means that these types of determinations do not in and of themselves indicate that market participants are not adhering to integrity and fairness.</p>
<p>Metrics relating to reportable situations (ASIC)</p>	<p>The reportable situations regime is aimed at ensuring more comprehensive and prompt identification and reporting of breaches by regulated entities. The regime also introduced an obligation for ASIC to publish information about reportable situations to enhance accountability and provide an incentive for improved behaviour. The data should provide insights on the volume, nature and distribution of breach reports, as well as the timeliness of reporting.</p> <p><i>ASIC is currently undertaking work to improve the quality and consistency of reporting and will consult in 2023 on a framework for future publications of the reportable situations data. Possible metrics will be considered once this matures.</i></p>	<p>As noted in COBA's previous submissions, the reportable situations regime (RSR) needs to consider breach materiality. In the absence of this, any metrics need to be carefully considered.</p> <p>The RSR is still a relatively new scheme, and it is our understanding that many of the breaches that have been reported are mostly of a relatively minor or benign nature. The seriousness of the breaches being reported needs to be carefully considered in applying this metric and weighted accordingly.</p>

Metric	Description <i>Interpretation and use</i>	COBA Comment
<p><b>Outcome: Regulators identify and act against misconduct</b></p>		
<p><i>Note: The metrics framework includes a number of metrics that measure different aspects of APRA and ASIC’s enforcement activity, including the volume of actions, timeliness, efficiency and results. These metrics collectively, together with supporting narrative and qualitative assessment of the actions undertaken, describe the effectiveness of enforcement functions. Changes in individual metrics should be assessed in light of the overall suite of enforcement metrics.</i></p>		
<p>Enforcement actions completed (APRA)</p>	<p>This measure reports on APRA’s completed enforcement actions.</p> <p><i>This measure indicates the volume of APRA’s enforcement activity.</i></p>	<p>COBA notes the lack of detail measuring the enforcement actions of APRA compared to those metrics measuring ASIC. We note that under this outcome, the Consultation Paper has listed seven different metrics for measuring ASIC’s enforcement actions, while only one is required for APRA.</p> <p>We think that the seven metrics provided for ASIC enforcement actions are appropriate, but we are concerned about the rather cursory metric for APRA. This is especially as the metric only measures “completion” of APRA enforcement actions but does not record the outcome of these actions, such as “No further action”, “Penalty issued”, etc.</p> <p>We think it would be appropriate for the APRA metrics to emulate the metrics required for ASIC as much as possible and as appropriate. This will help provide a better and clearer picture on the effectiveness of APRA’s enforcement actions and the impact, if any, they have on the financial markets.</p>
<p><b>Outcome: Where consumers suffer loss as a result of misconduct, they are able to secure redress</b></p>		
<p><i>Note: The FRAA encourages the regulators to develop measures on the timeliness of compensation.</i></p>		
<p>Compensation via AFCA</p>	<p>This metric summarises the dollar value of compensation awarded to complainants that filed complaints with AFCA.</p> <p><i>AFCA can award compensation for losses suffered because of a financial</i></p>	<p>COBA considers the metric above “The share of AFCA complaints decided in favour of the customer” to be more appropriate than measuring compensation awarded for measuring this Outcome on consumer redress. For the focus here should be on how many complaints are being made and in whose favour are they being made.</p>

Metric	Description <i>Interpretation and use</i>	COBA Comment
	<p><i>firm's error or inappropriate conduct. An increase in the value of compensation awarded may indicate an increasing volume of provable misconduct but also the proper functioning of AFCA's remedial function. This metric includes both amounts awarded in decisions and amounts obtained through agreements.</i></p>	<p>Considering the Outcome is focused on 'misconduct' we express caution in relying on determinations made by AFCA to measure this. We note that many of the determinations made against our members are accepted not because of wrongdoing by our members but because it is simpler to 'settle' the matter rather than proceed to court. It is the view of our members that many determinations awarding compensation against them by AFCA go over and above the actual obligations that exist on them and would be winnable in the courts. However, due to the extra costs and complexities of the court action it is simpler to accept the determination than to contest it. As such, we do not think that awarding of compensation, as such, should be viewed or taken as evidence of misconduct by the industry.</p> <p>An alternative would be examining complaints received regarding the ePayments Code and where determinations have been made in favour of the complainant. Breaches of this Code are much clearer on assessing whether misconduct has occurred and in assessing whether a financial institution has taken the appropriate actions. There is less room for the wide interpretation often taken by AFCA in its approach to complaints.</p> <p>However, if this metric is to remain in the Framework, then we think that rather than recording the dollar value of compensation the metric should be:</p> <ul style="list-style-type: none"> <li>• how many complaints were received by AFCA; and</li> <li>• if the complaint was determined in favour of the consumer was compensation awarded.</li> </ul> <p>This is because the Outcome is focused on whether consumers have been able to secure redress when there has been misconduct and not about how much was awarded. It is unclear to COBA how recording year-to-year dollar amounts is an appropriate metric especially as this is likely to be volatile depending on the number of complaints received, the nature of the complaint, and the compensation awarded. The volatility of the dollar amounts record could create the false impression that in some years AFCA is being 'tough' on industry due to the high volumes awarded while be 'soft'</p>

Metric	Description <i>Interpretation and use</i>	COBA Comment
		<p>on industry in years where there are lower volumes. There is a far greater amount of detail and nuance behind these figures on a year to year basis and due to the strong likelihood of confusion we would not support these being used. Instead, a relatively simple noting of whether there has been an awarding of compensation would achieve the same result without the resulting confusion that could come from recording dollar amounts.</p>
<p>Compensation or remediation agreed in court enforceable undertakings (ASIC)</p>	<p>This metric summarises the dollar value of compensation awarded as an outcome of ASIC’s pursuit of regulatory matters.</p> <p><i>This metric addresses part of ASIC’s role in taking action against misconduct. An increase in the value of compensation awarded indicates both an increasing volume of misconduct but also the proper functioning of a component of ASIC’s law enforcement function.</i></p>	<p>COBA makes similar comments on this metric as for “Compensation via AFCA”. Considering the nature of court enforceable undertakings, we think that there could be significant volatility in these figures year-to-year. A more appropriate metric could be to:</p> <ul style="list-style-type: none"> <li>• record the number of undertakings;</li> <li>• the success of the undertaking; and</li> <li>• noting if monetary compensation was awarded and not the dollar amount.</li> </ul>
<p>Internal dispute resolution (ASIC)</p>	<p>ASIC is currently developing metrics using information lodged under the internal dispute resolution (IDR) data reporting framework.</p> <p><i>Further details on the interpretation and use of these metrics will be considered once an appropriate methodology and data collection is mature.</i></p>	<p>COBA believes that this metric has strong potential, however, this is dependent upon the metric and the maturity of the data coming from the new IDR reporting process.</p>