

EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Corporations Act 2001

Corporations Amendment (Portfolio Holdings Disclosure) Regulations 2021

Section 1364(1) of the *Corporations Act 2001* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Chapter 7 of the *Corporations Act 2001* provides that the trustees of registrable superannuation entities (RSEs) must make certain information about the RSE's investment options publicly available on the entity's website no later than 90 days after a specified reporting day (the portfolio holdings disclosure regime). Regulations may prescribe if certain information may be aggregated, and how that information should be organised.

The *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019* amended the information about portfolio holdings available for superannuation fund members and other stakeholders. These measures have subsequently been amended by the *Treasury Laws Amendment (Your Future, Your Super) Act 2021*.

The *Corporations Amendment (Portfolio Holdings Disclosure) Regulations 2021* supports the portfolio holdings disclosure regime by prescribing the manner in which information provided under the portfolio holdings disclosure regime must be organised.

The regulations detail the way information regarding the RSE's portfolio holdings that must be made publicly available is to be organised. However, in addition to these prescribed disclosures, superannuation trustees may provide supplementary information regarding the portfolio holdings of the RSE's products in a separate public disclosure.

The amendments made by this instrument apply in relation to reporting days that occur on or after 31 December 2021 or the commencement of the Schedule, whichever is later.

These regulations were publicly consulted on from 28 April 2021 to 25 May 2021. Following the consultation, changes were made to the regulations and a second round of public consultation was held between 17 August 2021 and 31 August 2021. Following the second round of consultation, the draft regulations were amended to provide for greater aggregation of certain investment items and to better outline the effects of derivatives on the total portfolio holding of the investment option.

Details of the Regulations are set out in [Attachment A](#).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The regulations commence the day after the instrument is registered and apply in relation to reporting days that occur on or after 31 December 2021 or the commencement of the Schedule, whichever is later.

A statement of Compatibility with Human Rights is at [Attachment B](#).

Example tables showing how an RSE should organise portfolio holdings in accordance with these Regulations at [Attachment C](#). Figures expressed in the example tables in are purely included for example purposes and are not intended to reflect a realistic portfolio of an RSE.

A Regulation Impact Statement is set out in [Attachment D](#).

Details of the Corporations Amendment (Portfolio Holdings Disclosure) Regulations 2021

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Corporations Amendment (Portfolio Holdings Disclosure) Regulations 2021* (the Regulations).

Section 2 – Commencement

Schedule 1 to the Regulations commences on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

The Regulations are made under the *Corporations Act 2001*.

Section 4 – Schedule

This section provides that each instrument that is specified in the Schedules to this instrument will be amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 1 – Portfolio Holdings Disclosure

Schedule 1 to the Regulations amends the *Corporations Regulations 2001* to prescribe the way in which portfolio holdings of a registrable superannuation entity (RSE) are to be disclosed for purposes of section 1017BB of the *Corporations Act 2001*.

Subsection 1017BB(1) of the *Corporations Act 2001* sets out the required information that is to be collected and disclosed in respect of an investment item allocated to an investment option. An investment item is an asset or a derivative. The Act requires that sufficient information be provided to identify the value, weighting, and exposure (with respect to the portfolio as a whole) of each item allocated to the investment option.

Subsection 1017BB(1A) of the *Corporations Act 2001* allows prescribed kinds of items to be aggregated, so that only the name of the kind of investment item, and the total value and total weighting or exposure of items of that kind are required to be disclosed.

Subsection 1017BB(3) in the *Corporations Act 2001* requires the trustee of an RSE, with the exception of trustees of RSEs exempted under subsection 1017BB(4), to make publicly available information regarding the RSE's portfolio holdings in accordance with regulations if regulations are made for that purpose. Trustees of affected RSEs are required to publish information relating to investment items on the RSE website in an area that is accessible to the public at all times.

Item 1 of Schedule 1 inserts Subdivision 2E.2 into Part 7.9 of the *Corporations Regulations 2001*. Regulation 7.9.07Z provides that the regulations contained in the new Subdivision are made for purposes of sub-section 1017BB(3) of the *Corporations Act 2001* and provides for rules around how the information must be organised. In general, information about an investment option must be organised in a manner consistent with the tables contained in the new Schedule 8D to the Regulations. There are four tables that provide for how information is required to be organised with respect to assets, derivatives, aggregated effect of derivatives by asset classes and aggregated effect of derivatives by currency exposure. The tables provide for different methods of organising information depending on whether the investment item is an asset or derivative, or if the particular kind of investment item can be aggregated.

Regulation 7.9.07Z provides that where an investment item in the tables in Schedule 8D states that the individual asset name is not required to be disclosed, the kind of disclosable item is a prescribed item for the purposes of section 1017BB(1A) of the *Corporations Act 2001*.

Subregulation 7.9.07ZA(1) requires the information to be presented consistently with the tables in new Schedule 8D, and requires that the information should be easily downloadable from the website of the entity in a delimited file format. Delimited file formats are file formats such as .csv and .txt formats that allows data to be analysed more efficiently.

Subregulations 7.9.07ZA(2) and (3) provide that information may be displayed using a different number of columns or rows, or with the use of subsidiary tables, but at a minimum information must be displayed consistently with the tables in Schedule 8D.

Recognising the interactive nature of websites, the required information may be dispersed and disclosed in multiple subsidiary tables as opposed to one single table, particularly when large amounts of information are required, as long as the information relates to that investment option and is easily accessible from those subsidiary tables and the information is available to be downloaded in a single delimited file format document.

An example of subsidiary tables is where each kind of investment item is disclosed in a separate tab of a table, so that the viewer can access the information about a specific kind of investment item by clicking the tab containing that information rather than scrolling down a screen.

Example tables for organising disclosable information in relation to a particular investment option are included in Attachment C.

Organising information for investment items that are not derivatives

Item 3 of Schedule 1 inserts Schedule 8D into the *Corporations Regulations 2001*. Schedule 8D contains the tables that outline how information required to be disclosed by section 1017BB of the *Corporations Act 2001* must be organised. The first table in Schedule 8D provides for the way information is to be organised and displayed for non-derivative investment items, subject to the organisation rules in regulation 7.9.07Z.

Figures expressed in the example tables in Attachment C are purely included for example purposes and are not intended to reflect a realistic portfolio of a RSE. The asset classes used in Table 1 reflect those used in APRA Reporting Standard SRS 550 *Asset Allocation*, and it is expected that trustees will classify assets in a similar manner for the purposes of the tables and APRA reporting. Exposure to asset classes resulting from derivative positions should be disclosed in Table 2-4 (and not Table 1).

Under section 1017BB of the *Corporations Act 2001*, trustees are only required to disclose investment items held by the RSE, an associate of the RSE or a pooled superannuation trust (PST). It is not a full look-through model to the underlying asset.

References in Table 1 to investment items which are externally managed are intended to refer to investments that are made or managed through the use of external fund managers who are not associated entities of the trustee. This includes where the external fund manager implements the making of the investment, or manages the investment of the RSE for the trustee. References to investment items which are internally managed are intended to be to those which are not externally managed.

In the context of the institutional investment industry, it is anticipated that funds or other investment vehicles would not be associates of the trustee for this purpose where an external fund manager has operational control over the investment of the assets of the fund or vehicle.

The rows contain particular investment items and columns contain headings that provide details for example: name/kind of institution or investment item, security identifier, units held, and a summary column containing the value and weighting.

For cash (including cash equivalents like term deposits and bank bills), amounts denominated in the same currency should be aggregated based on the relevant institution (for example, ABC Bank). This means that amounts denominated in one currency that are held in different accounts with the same institution can be disclosed as a single aggregate figure (rather than individually disclosing the amount in each individual account). If amounts are denominated in different currency but held with the same institution, they should be aggregated by currency and disclosed separately. The reference to “name of institution” for cash refers to the institution where the cash has been deposited or the institution that accepts responsibility for the payment of the amount in the case of bank bills.

Fixed income assets that are held directly by the reporting entity, an associated entity or a PST and internally managed should be aggregated by the counterparty or issuer of the asset. The total value and weighting of the assets by issuer or counterparty for the asset should be disclosed. The names, value and weighting of each individual fixed income asset do not need to be disclosed.

Fixed income assets that are held directly by the reporting entity, an associated entity or a PST and are externally managed should be aggregated by the entity that manages the asset. The total value and weighting of the assets aggregated by fund manager should be disclosed. For example, where an external manager is responsible for multiple vintages or co-investment arrangements are in place, the values should

be aggregated. The names, value and weighting of each individual fixed income asset do not need to be disclosed. Externally managed unlisted equity, unlisted property, unlisted infrastructure and unlisted alternatives are to be aggregated in a similar way.

Unlisted equity, unlisted property, unlisted infrastructure and unlisted alternatives that are held directly by the reporting entity and internally managed should have value and weighting aggregated by asset class. The name of the individual assets must be disclosed along with further information as required (for example, percentage of ownership and address for unlisted property that is internally managed according to the table). However, trustees do not need to disclose individual asset values and weights (instead they are aggregated for the kind of investment item).

Each item of listed equity, listed property, listed infrastructure and listed alternatives must be disclosed along with the value and weighting of each item. There is no aggregation for these kinds of investment items. The references to security identifier in relation to listed assets is intended to refer to the relevant stock market code for that asset.

The total row under each kind of investment item is to show the aggregate of the totals of each kind of investment item disclosed in the table.

Weightings for each investment item are to be calculated on the basis of the value of that investment item divided by the total value of all investment items held by the investment option as disclosed in Table 1 and 2 (including derivatives).

Trustees are able to use a valuation methodology that is consistent with how investment items are valued for other purposes, and it is expected that valuations will align with APRA reporting. To ensure consistency across the table, all values in the table should be calculated using a consistent valuation methodology and should be expressed in Australian dollars. To aid with reader's understanding of the material, RSEs should disclose details of the valuation methodology used, including currency conversion rates where applicable.

Organising information for derivatives

The method of displaying information on investment options that are derivatives is contained in Tables 2 to 4 in Schedule 8D. Investment items that are derivatives are to be aggregated by the type of derivative. These types are swaps, forwards, futures and options. If trustees consider they have a derivative that cannot be classified as one of these four types, additional types of derivatives can be added to the table. Individual derivatives of a certain type do not need to be disclosed. Similar to the assets table (table 1), figures expressed in the example table in Attachment C are purely included for example purposes and are not intended to reflect a realistic portfolio of a RSE.

Similar to table 1, aggregated weightings for each type of derivative can be calculated on the basis of the total value of that derivative type divided by the total value of all investment items in the investment option (including derivatives).

Trustees are able to use a valuation methodology that is consistent with how derivative items are valued for other purposes, and it is expected that valuations will

align with APRA reporting. To ensure consistency across the table, all values in the table should be calculated using a consistent valuation methodology and expressed in Australian dollars. To aid with reader's understanding of the material, trustees should disclose details of the valuation methodology used, including currency conversion rates where applicable.

Organising information with respect to effect of derivatives on the investment option and currency

The method of displaying information on investment options that demonstrate the effect of derivatives on the investment option is provided by Tables 3 and 4.

In these tables the information required to be disclosed with respect to each of the asset classes (Table 3) or categories of currency (Table 4) show the percentage of the assets and derivatives in the investment option that is made up by the particular asset class or currency. The valuations used to determine the assets and derivatives in the investment options are the values disclosed in Tables 1 and 2. The tables also show the effect of derivatives exposure on that asset class or currency, that is, the difference in the total allocation driven by the total derivatives exposure to that asset class or currency.

The amendments in Schedule 1 apply to the first reporting day either on or after 31 December 2021 or the first reporting day after the commencement of the Regulations, whichever occurs later. ASIC has deferred the first reporting day for portfolio holding disclosure to 31 December 2021 in ASIC Class Order [CO14/443].

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Corporations Amendment (Portfolio Holdings Disclosure) Regulations 2021

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Corporations Amendment (Portfolio Holdings Disclosure) Regulations 2021* support the portfolio holdings disclosure regime in the *Corporations Act 2001* by prescribing the manner in which information provided under the portfolio holdings disclosure regime must be organised.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

ATTACHMENT C

Table 1 – Assets

Portfolio Holdings Information for Investment Option [A]—Assets			Summary	
Cash				
Name of Institution	Currency		Value (AUD)	Weighting (%)
Bank A	AUD		\$200,000	2.74%
Bank B	AUD		\$200,000	2.74%
Bank B	USD		\$200,000	2.74%
Total			\$600,000	8.22%
Fixed Income				
Held directly or by associated entities or by PSTs				
Internally managed				
Name of Issuer / Counterparty			Value (AUD)	Weighting (%)
Issuer A			\$200,000	2.74%
Issuer B			\$200,000	2.74%
Total			\$400,000	5.48%
Fixed Income				
Investment in non-associated entities;				
Held directly or by associated entities or by PSTs				
Externally managed				
Name of Fund Manager			Value (AUD)	Weighting (%)
Fund Manager A – all vintages and co-investments aggregated			\$200,000	2.74%
Fund Manager B			\$200,000	2.74%
Total			\$400,000	5.48%
Listed Equity				
Name/kind of investment item	Security Identifier	Units held	Value (AUD)	Weighting (%)
Company A	AAA	100	\$200,000	2.74%
Fund B	BBB	100	\$200,000	2.74%
Total			\$400,000	5.48%
Unlisted Equity				
Held directly or by associated entities or by PSTs				
Internally managed				
Name/kind of investment item	% Ownership		Value (AUD)	Weighting (%)

Company A	50			
Company B	50			
Total		\$400,000	5.48%	
Unlisted Equity				
Investment in non-associated entities;				
Held directly or by associated entities or by PSTs				
Externally managed				
Name of Fund Manager		Value (AUD)	Weighting (%)	
Fund Manager A – all vintages and co-investments aggregated		\$200,000	2.74%	
Fund Manager B		\$200,000	2.74%	
Total		\$400,000	5.48%	
Listed Property				
Name/kind of investment item	Security Identifier	Units held	Value (AUD)	Weighting (%)
Property Security A	CCC	100	\$200,000	2.74%
Property Fund B	DDD	100	\$200,000	2.74%
Total			\$400,000	5.48%
Unlisted Property				
Held directly or by associated entities or by PSTs				
Internally managed				
Name/kind of investment item	Address	% of property held	Value (AUD)	Weighting (%)
Property A	XYZ Street	50%		
Property B	ABC Street	50%		
Total			\$400,000	5.48%
Unlisted Property				
Investment in non-associated entities;				
Held directly or by associated entities or by PSTs				
Externally managed				
Name of Fund Manager		Value (AUD)	Weighting (%)	
Fund Manager A – all vintages and co-investments aggregated		\$200,000	2.74%	
Fund Manager B		\$200,000	2.74%	
Total		\$400,000	5.48%	
Listed Infrastructure				
Name/kind of investment item	Security Identifier	Units held	Value (AUD)	Weighting (%)

Infrastructure Security A	EEE	100	\$200,000	2.74%
Infrastructure Fund B	FFF	100	\$200,000	2.74%
Stapled Security C	GGG	100	\$200,000	2.74%
Total			\$600,000	8.22%
Unlisted Infrastructure				
Held directly or by associated entities or by PSTs				
Internally managed				
Name/kind of investment item	% Ownership		Value (AUD)	Weighting (%)
Infrastructure Asset A	58%			
Infrastructure Asset B	100%			
Total			\$400,000	5.48%
Unlisted Infrastructure				
Investment in non-associated entities;				
Held directly or by associated entities or by PSTs				
Externally managed				
Name of Fund Manager			Value (AUD)	Weighting (%)
Fund Manager A – all vintages and co-investments aggregated			\$200,000	2.74%
Fund Manager B			\$200,000	2.74%
Total			\$400,000	5.48%
Listed Alternatives				
Name/kind of investment item	Security Identifier	Units held	Value (AUD)	Weighting (%)
Alternative security A	HHH	100	\$200,000	2.74%
Alternatives Fund B	III	100	\$200,000	2.74%
Total			\$400,000	5.48%
Unlisted Alternatives				
Held directly or by associated entities or by PSTs				
Internally managed				
Name/kind of investment item			Value (AUD)	Weighting (%)
Asset A				
Asset B				
Total			\$400,000	5.48%
Unlisted Alternative				
Investment in non-associated entities;				
Held directly or by associated entities or by PSTs				

Externally managed		
Name of Fund Manager	Value (AUD)	Weighting (%)
Fund Manager A – all vintages and co-investments aggregated	\$200,000	2.74%
Fund Manager B	\$200,000	2.74%
Total	\$400,000	5.48%
Total Investment Items	\$6,400,000	87.67%

Table 2 – Derivatives by kind of derivative

Portfolio Holdings Information for Investment Option [A]—Derivatives		
Kind of derivative	Value	Weighting
Swaps	\$1,210,763.69	16.59%
Forwards	\$123,456.78	1.69%
Futures	\$22,568.65	0.31%
Options	-\$456,789.12	-6.26%
Total	\$900,000.00	12.33%

Table 3 – Derivatives by asset class

Portfolio Holdings Information for Investment Option [A]—Derivatives by Asset Class		
Asset Class	Actual Asset Allocation (% of Assets (including derivatives) in the investment option)	Effect of Derivatives Exposure (% of Assets (including derivatives) in the investment option)
Cash	5%	0%
Fixed Income	20%	-5%
Equities	30%	+5%
Property	15%	0%
Infrastructure	15%	0%
Alternatives	15%	0%
Total	100%	

Table 4—Derivatives by currency

Portfolio Holdings Information for Investment Option [A]—Derivatives by Currency		
Currency exposure	Actual Currency Exposure (% of Assets (including derivatives) in the investment option)	Effect of Derivatives Exposure (% of Assets (including derivatives) in the investment option)
AUD	50%	+20%
USD	35%	-15%
Currencies of other developed markets	10%	-4%
Currencies of emerging markets	5%	-1%

Regulation impact statement – superannuation portfolio holdings disclosure

Background

The importance of superannuation

Superannuation is an important sector of the financial system and a major pillar of Australia's retirement income system. As the second-largest savings vehicle (18 per cent of assets held by Australian households) after owner occupied housing¹, superannuation provides a significant and growing source of funding for the economy and long-term capital formation. Superannuation's large pool of relatively stable and unleveraged assets adds depth and liquidity to financial markets and contributes positively to financial system stability.² Superannuation assets total \$3.3 trillion as at 30 June 2021³.

The Australian Prudential Regulation Authority (APRA) has prudential oversight of the superannuation system and is generally responsible for member outcomes. It is also generally responsible for licensing and supervision of registrable superannuation entity (RSE) licensees. The Australian Securities and Investments Commission (ASIC) is generally responsible for protecting consumers from harm, market integrity, disclosure and record keeping. The Commissioner of Taxation is generally responsible for self-managed superannuation funds, data and payment standards, tax file numbers and the compassionate release of superannuation amounts. Superannuation funds are generally regulated by both the *Superannuation Industry (Supervision) Act 1993* (SIS Act) and the *Corporations Act 2001* (Corporations Act) and related regulations, along with instruments issued by either APRA or ASIC. The Australian Taxation Office (ATO) also plays a role in the administration of self-managed superannuation funds.

The *Superannuation Guarantee (Administration) Act 1992* requires employers to pay 10 per cent of an employee's salary into superannuation, with some exceptions. Most employees can choose a superannuation fund into which these compulsory contributions are made. Generally, employees who do not choose a superannuation product are defaulted into a fund, chosen by their employer, which offers a standardised product called a MySuper product.

The Super System Review (Cooper Review) and Stronger Super

In May 2009, a review was commissioned by the then Government to examine and analyse the governance, efficiency, structure, and operation of Australia's superannuation system, led by Jeremy Cooper (the Cooper Review). The Cooper Review provided an opportunity to take stock of the superannuation system considering how it might develop as the system matures. Whilst the Cooper Review concluded that the broad architecture of the system was appropriate, it recommended significant changes to enhance member outcomes and increase the efficiency, governance, and transparency of the system.

¹ Source: ABS Cat. No. 6523.0 Household Income and Wealth Australia, 2017-18, Table 2.4 (issued 12 July 2019).

² Commonwealth of Australia 2014, Financial Services Inquiry (Murray): Final Report, Canberra, page 87.

³ APRA Quarterly Superannuation Statistics June 2021 (Published 31 August 2021).

The recommendations of the Cooper Review were handed to Government in 2010 and formed the basis for the Stronger Super reforms, which were targeted at the superannuation industry. The Cooper Review made recommendations aimed at improving the superannuation system's focus on operating in members' best interests, leading to a series of reforms to the regulatory framework for superannuation funds. In relation to transparency, the Cooper Review specifically recommended a complete portfolio holdings disclosure (PHD) regime⁴, noting that portfolio disclosure in Australia is unduly opaque and does not meet global best practice. Requiring the disclosure of portfolio holdings will provide greater transparency and allow members to understand where their superannuation is invested.

Whilst the legal framework for portfolio holdings has been in place in the primary law since 2012, the obligations have not come into effect as ASIC has provided class order relief until supporting regulations have been made by Government. ASIC provided this relief noting that "without regulations to support the PHD requirements, there is no information prescribed to standardise the format for PHD and provide further information about specific exemptions from the requirements"⁵. These supporting regulations are being assessed as a part of this RIS.

1. What is the policy problem you are trying to solve?

Trustees of superannuation funds are required to act in the best financial interests of their members.

There are weaknesses in the transparency framework governing trustees and in particular, superannuation entities do not currently provide sufficient detailed information on the final allocation of their fund member's contributions. The failure to provide this type of detailed information limits the ability for all market participants, including researchers, financial advisers, and investors, to have a clear, comparable, and complete picture of the superannuation investment market.

The lack of transparency in asset allocation results in uninformed decision making, which can result in adverse outcomes for fund members and an "erosion of trust between investors and managers."⁶ Reforms, such as improved superannuation portfolio holdings disclosure, are needed in Australia to improve our systemic transparency and system efficiency to "enable members to choose to engage should they desire to do so."⁷ This is of a particular importance given the compulsory nature of superannuation.

The Productivity Commission's report, *Superannuation: Assessing Efficiency and Competitiveness* (PC Report) found 53 per cent of members did not understand how their

⁴ Recommendation 4.16 of the 2010 Super System Review: Final Report — Part One: Overview and Recommendations, page 39.

⁵ ASIC Explanatory Statement to *ASIC Corporations (Amendment) Instrument 2019/1056*, pages 1-2.

⁶ 'Aussie funds keep investors in the dark', Emma Rapaport | 16 Dec 2020 | Fidelity

⁷ Productivity Commission Inquiry Report No.91, 21 December 2018 *Superannuation: Assessing efficiency and competitiveness*, page 246.

funds are invested (either not at all or not very well).⁸ The review further highlighted that the lack of transparency “makes it harder for engaged members to compare products and identify the best-performing funds. This suppresses competitive pressure on the demand side and gives rise to the perverse risk of worse outcomes for members who do get engaged.”⁹

Improved disclosure on portfolio holdings will enable members to communicate their preferences to funds about exposure to certain asset classes. This should promote efficiency and enhance competition. If a member is dissatisfied with the asset classes of their investment option, they can switch to an alternative investment option, or change superannuation providers. Enhanced transparency supports superannuation funds being more accountable for their requirement to act in the best financial interests of members.

Similar sentiments have been expressed by International market financial analyst, Morningstar. It has indicated that the lack of disclosure in relation to the final asset allocation of superannuation member contributions can:

- restrict the ability of investors to discover if a fund is investing in a particular sector, which is important to some investors;
- hinder researchers, investors, and financial planners in determining the risks of particular investments; and
- fail to ensure investors have adequate protection, as investors are unable to establish whether a fund manager is investing in particularly risky markets or acting in a fraudulent manner.

In 2013, 2015 and 2020,¹⁰ Morningstar also noted that Australia lags behind international best practice when it comes to improved transparency in relation to the final assets to which superannuation funds invest (portfolio holdings).

"Most managers around the world provide portfolio disclosures monthly," says Anthony Serhan, Morningstar's managing director of research strategy for the Asia-Pacific. "Of the 25 markets we looked at, Australia is now the only market with no implemented, regulated form of portfolio holdings disclosure. "New Zealand has implemented it. We think this is going to help people understand their funds a lot better."¹¹

Aware Super in its submission to the ‘Your Future, Your Super Regulations and associated measures’ consultation, noted that “Australia lags many other jurisdictions in providing

⁸ Productivity Commission Inquiry Report No.91, 21 December 2018 *Superannuation: Assessing efficiency and competitiveness*, page 259.

⁹ Productivity Commission Inquiry Report No.91, 21 December 2018 *Superannuation: Assessing efficiency and competitiveness*, page 28.

¹⁰ Global Disclosure Practices: How Markets Around the World Stack Up
<https://www.morningstar.com/articles/1014385/global-disclosure-practices-how-markets-around-the-world-stack-up>

¹¹ <http://www.theage.com.au/money/super-and-funds/managed-funds-score-d-for-disclosure-20150611-ghlkuw?skin=smart-phone#ixzz3m2fhv2fU>

information on investments held by each investment option”¹². Furthermore, the authors of the Morningstar Report said that “for a country that aspires to be considered a global financial centre, having weak regulation that endorses substandard portfolio disclosures should be a concern for all industry participants and is not in the best interests of retail investors.”¹³

2. Why is government action needed?

The majority of superannuation funds are not voluntarily disclosing portfolio holdings. Some commentators, such as Rainmaker, have observed that “PHD is practiced by only 60 super funds, being about one-third of APRA-regulated super funds. Most funds that practice PHD do so for their equities holdings, with only a small number doing so for other asset classes such as property, bonds, infrastructure, private equity, and cash. Of the funds that disclose their major shareholdings, they typically disclose only the largest 20 holdings, 6-monthly in arrears.”¹⁴

On this basis, Government intervention is needed to deliver increased and consistent transparency amongst superannuation funds, allowing for more informed decision making and enhancing confidence and competition in the superannuation system.

In addition, following the Cooper Review recommendation, the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012* amended the Corporations Act to establish the framework for superannuation funds to disclose portfolio holdings information (section 1017BB). This framework was subsequently amended by the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation) Act 2019* and more recently the *Treasury Laws Amendment (Your Future, Your Super) Act 2021*.

To operationalise section 1017BB of the Corporations Act, regulations are required ahead of ASIC Class Order relief expiring, so that industry knows the level of information required and method for disclosure to meet their legal obligations.

3. What policy options are you considering?

Option 1: Maintain current regulatory settings

The obligation to disclose portfolio holdings already exists in the primary law, in section 1017BB of the *Corporations Act 2001*. These obligations require superannuation funds to publicly disclose sufficient information to identify certain investment items, identify the value and weighting of these disclosable investment items along with the total value and weighting of all disclosable investment items.

¹² Aware Super 25 May 2021 submission to the ‘Your Future, Your Super Regulations and associated measures’ consultation, page 16.

¹³ Comments attributable to Grant Kennaway and Christina West as quoted in ‘Aussie funds keep investors in the dark’, Emma Rapaport | 16 Dec 2020 | Fidelity

¹⁴ Rainmaker 17 March 2021 submission to Senate Economics Legislation Committee Inquiry into Treasury Laws Amendment (Your Future, your Super) Bill 2021, page 5.

Under this option, in the absence of any further regulations, the method of disclosure of portfolio holdings would be at the discretion of the trustees of superannuation funds. This option also presents a high likelihood of ASIC continuing to provide class order relief from the existing obligations, in which case there would be no change from the status quo. This is because without regulations there would continue to be no prescribed information to standardise the format of disclosures and any specific exemptions from the requirements.

Option 2: Disaggregated and uniform information disclosed across asset classes

A simple form of disclosure where the information required to be disclosed is the same for all investments, regardless of the type of investment or asset class. Under this option, the information required to be disclosed includes:

- name/kind of asset;
- information required to identify the asset (e.g. security identifier);
- the number of assets held (e.g. number of shares, number of units); and
- the value of the asset expressed in AUD and the weighing of that asset relative to the total portfolio.

This information would need to be disclosed for all individual assets regardless of size, nature (listed or unlisted) or ownership structure.

The draft regulation impact statement released for public consultation incorporated this option for stakeholder comment.

Option 3: Aggregated and tailored information disclosed for particular asset classes

This option differs to Option 2 in that it separates the disclosure for different types of asset classes to allow for tailored information to be disclosed by superannuation funds which reflects the most relevant information for users. Introducing separate categories of disclosure allows for aggregated values to be disclosed for certain categories of unlisted assets and derivatives.

Specifically, this option allows:

- Aggregation of valuations for all internally managed, directly owned unlisted assets;
- Aggregation of assets by fund manager for all externally managed, directly owned unlisted assets;
- Aggregation of assets by fund manager for all externally managed unlisted assets that are held by a non-associated entity;
- Aggregation by type of derivative for derivative valuations and weightings; and
- Additional tables to disclose the exposure of the fund to certain asset classes and currency as a result of the total derivative positions.

This option has been revised to reflect comments received from stakeholders when the draft regulations were released for public consultation (described in section 5 below).

4. What is the likely net benefit of each option?

Option 1: Maintain current regulatory settings

Maintaining the current settings involves compelling superannuation funds to undertake a form of disclosure without providing sufficient guidance as to how this is to be implemented. The current ambiguity in the law has resulted in ASIC providing class order relief from the disclosure obligations for many years. This is not a desirable long-term outcome.

If ASIC does not continue its current class order relief, the impact of this option will be primarily on businesses as they will be required to compile and present the information, including navigating the current ambiguity to ensure compliance with the law.

The impact on individuals will be positive through some transparency facilitating more information for members about investment decisions of superannuation funds. In the absence of any further guiding regulations however, there is likely to be limited comparability across different funds. There is no cost to individual's leisure time as there is no obligation for members to review PHD information.

Option 2: Disaggregated and uniform information disclosed across asset classes

The impact of this option will be primarily on businesses. It will require public disclosure of data which superannuation funds will be responsible for compiling. The requirement to disclose disaggregated information about all investments, particularly derivatives, will result in comprehensive, but extremely lengthy disclosure. One superannuation fund noted that having to disclose individual derivative positions would result in over 21,000 lines of information to be reported.¹⁵

The impact on individuals will be positive through improved transparency facilitating more information for members about investment decisions of superannuation funds, including for those members who rely on professional advisers, reports by professional investors and analysts. However, as the requirements for disclosure are not tailored to individual asset classes, this option limits the ability of individuals and professional advisers to make conclusions based on the information provided. The length of the information provided may also discourage members from engaging with it.

As with Option 1 there is no cost to individuals' leisure time and no specific community group will be impacted by this option.

Costs

It is anticipated that Option 2 will have a total annual compliance cost impact, averaged over 10 years, of \$5.2 million to business. These primarily relate to a combination of start-up costs and ongoing costs associated with understanding and then meeting the PHD requirements. Further information on the methodology and assumptions underpinning the estimated compliance cost is at Appendix A.

As this option requires superannuation funds to disclose the precise values of unlisted assets some funds argued it has the potential to reduce investment returns for super fund members, which is a significant cost. Stakeholders noted that unlisted assets such as property and infrastructure typically have a limited universe of potential buyers. The ability

¹⁵ Australian Super 31 August 2021 submission to 'Corporations Amendment (Portfolio Holdings Disclosure) Regulations 2021 consultation', page 7.

to generate premiums upon the sale of these assets could be eroded under this option, as buyers are likely to anchor their bids to the disclosed valuation.

Fund managers with an international presence noted that it would reduce their ability to compete in global markets, given the increased information asymmetry as competitors would have full and complete access to their portfolios and could use this to their advantage.

Requiring public disclosure of unlisted assets could also reduce the number of investment opportunities available to Australian superannuation funds, should international investor partners who are not subject to the same level of disclosure requirements, object to having this information in the public domain.

Benefits

Option 2 provides additional transparency compared to Option 1.

Super Consumers Australia notes that improving the disclosure regime “will facilitate regulators and researchers in better understanding the relative (under) performance of funds. It will also allow deeper investigation of the factors that go into good fund performance which can be used to assist industry and ultimately consumers with better performing funds”¹⁶.

Engaged fund members would benefit from the ability to see where their contributions are invested. This option may improve incentives for members to engage with funds and strengthen confidence in the superannuation system by increasing the visibility of fund operations.

In addition, greater transparency would provide consumers that may be willing to pay higher fees to access specific investment strategies with the confidence that their super fund is true to label, or alternatively the incentive to switch funds should the strategy of their current super fund not meet their expectations.

There is also potential for increased engagement with superannuation through heightened media commentary resulting from the increased disclosure. Financial commentators support the translation of comprehensive disclosures into key messages thereby improving the accessibility of this information for the benefit of members.

Greater access to information regarding the underlying investment strategy of a fund is also likely to benefit financial advisers/planners who will be in a position to undertake more detailed analysis regarding the suitability of a fund’s investment strategy when making recommendations to their clients.

Overall, it is expected that more informed decision making has the capacity to make the superannuation sector more competitive.

¹⁶ Super Consumers Australia, *Submission to Superannuation Portfolio Holdings Disclosure Consultation* August 2021

Net benefit

Option 2 provides a clearer and more consistent level of transparency. It also empowers engaged members, providing them with the opportunity to become more involved with their superannuation.

It is expected that the costs associated with Option 2 are lower than what would be incurred under Option 1 because it provides certainty to industry about the method of disclosure to meet their legal obligations. Assuming the existing ASIC class order relief was not extended, Option 1 would see a wide range of costs incurred depending on the extent to which each superannuation fund sought legal advice and consulting services to establish a bespoke reporting regime that aligns with the obligations established in the Corporations Act. Setting clear expectations also provides for more efficient regulatory oversight and provides for comparability across funds.

However, the overall costs associated with Option 2 are higher and likely to outweigh the benefits. This is because Option 2 would require the disclosure of potentially commercially sensitive information about the valuation of unlisted assets and the derivative positions of the fund. Disclosure of this information could reduce the investment returns of the fund by reducing the number of investment opportunities available to Australian superannuation funds.

Option 3: Aggregated and tailored information disclosed for particular asset classes

The impact of this option will be primarily on businesses and the internal processes put in place by superannuation funds to comply with the requirements would be a matter for individual funds. Relative to Option 2, the quantum of information required to be disclosed is significantly reduced as funds are able to report information on an aggregated basis for certain asset classes (particularly in relation to derivative positions).

Given the scope for aggregation of assets under this option, the impact on individuals will be positive through easier information for users to digest.

As with the other options presented there is no cost to individuals' leisure time and no specific community group will be impacted by this option.

Costs

The annual compliance cost impact for Option 3 is estimated to be the same as for Option 2 because even though this option requires less detail to be reported (as a result of aggregation) the same underlying data will still need to be collated and checked by the business.

The annual compliance cost impact, averaged over 10 years, is estimated to be \$5.2 million to business.

Benefits

Option 3 delivers many of the benefits as outlined under option 2, however the information is considered to be more digestible for members and the public at large. Having relevant information freely available in the public domain would not only benefit engaged members but would also be advantageous to those disengaged members looking to become more

engaged, as well as professionals such as market analysts and advisers. Option 3 also reduces the incentive for superfunds to engage in more intermediated forms of investment which would lower returns for members (rather than direct investment).

A significant benefit associated with Option 3 is the flexibility to allow aggregated values to be disclosed for certain category types. This introduces a significant protection mechanism for market-sensitive assets. In particular, members will have improved access to information regarding the exposure of their superannuation investment option to certain types of assets, while allowing superannuation funds to protect commercially sensitive information and continue to meet obligations under confidentiality agreements that may be in place with service providers. Protecting this sensitive information will reduce the risk of these disclosures negatively impacting returns for members. This is outlined in further detail in the consultation section below.

Net benefit

Compared with Option 2 (above), members and superannuation funds will benefit from more salient information in the marketplace without disclosing commercially sensitive information. As such Option 3 is likely to yield a higher net benefit compared to the other options canvassed in this RIS.

5. Who did you consult and how did you incorporate their feedback?

Exposure draft regulations for implementing the PHD regime were released for public consultation as part of the Your Future, Your Super Regulations and Associated Measures consultation process. Consultation was conducted between 28 April 2021 and 25 May 2021.

The Government sought feedback on the proposed methodology to quantify the costs of the reforms including the estimated quantified costs for each option, the extent to which the costs might vary between the options and whether there are any other costs (ongoing or upfront) that may not have been considered. A link to the draft Regulation Impact Statement provided for consultation is here: <https://treasury.gov.au/consultation/c2021-162375> in the *Improving Accountability and Member Outcomes Explanatory Statement*.

Most comments received on the PHD measure were from superannuation funds and their representative bodies. The vast majority of stakeholders only provided comments on the draft regulations themselves rather than the draft Regulation Impact Statement consultation paper.

Key feedback provided by stakeholders on the draft regulations from this consultation included concerns around the:

- volume of data and its usability for members, financial advisers, market analysts and commentators;
- potential impact on future investment returns and investment opportunities by disclosing commercially sensitive information; and
- detailed disclosure required on derivatives creating opportunities for other market participants to trade against super funds.

Noting this feedback, the Government undertook a second round of consultation. In particular, the draft regulations and explanatory statement were amended to:

- introduce a requirement that the information should be easily downloadable from the website of the fund in a delimited file format;
- allow cash and bank bill investments to be aggregated by the relevant institution;
- sub-divide infrastructure and property into directly held and unitised and require percentage ownership for directly held;
- remove the requirement to disclose maturity dates and counterparty name for derivatives; and
- make it clear in the explanatory statement that, in addition to the mandatory disclosures, registrable superannuation entities (RSEs) are free to provide supplementary information regarding the portfolio holdings of the RSE's products in a separate public disclosure.

Consultation on the revised exposure draft regulations and explanatory statement was open from 17 August 2021 until 31 August 2021. Once the regulations are made, the Government will publish the non-confidential submissions. Consistent with earlier rounds of consultation, the two main concerns identified by stakeholders related to:

- the regime requiring disclosure about investments in unlisted assets; and
- the volume of information to be disclosed about derivative positions entered into by superannuation funds.

Superannuation funds were concerned that being compelled to release detailed information on unlisted assets would make them a less attractive investment partner for these assets, breach confidentiality clauses (for example in relation to private equity investments) and be out of step with obligations imposed by international pension funds and the Future Fund. A number of funds also noted that the disclosures would encourage funds to engage in more intermediated forms of investment (rather than direct investment) which would lower returns for members. The move to more intermediated forms of investment, would reduce the likelihood of these investments being captured under the disclosure obligations.

In relation to derivatives, the main view from funds was that the level of detail would be too complex and overwhelming for members and could potentially be used by other market participants to trade against the fund. Funds considered this potential remained despite the removal of certain disclosures in the second round of consultation.

Noting the consistent feedback provided across the two rounds of consultation regarding the disclosure of values for unlisted assets and the derivatives disclosure, Option 3 has been further revised to introduce new categorisations of assets to provide for more tailored aggregation in line with stakeholder feedback.

6. What is the best option from those you have considered?

Taking into consideration stakeholder feedback (described above), Option 3 is the preferred option for addressing the policy problem outlined in this regulation impact statement. It strikes the best balance between transparency and compliance costs. In particular, Option 3

will address concerns raised by stakeholders and provides a clearer level of transparency for super fund members than current arrangements, while providing protection for commercially sensitive information. Under Option 3, the aggregated disclosures now allowed for derivatives should also greatly reduce the length of the disclosures and is expected to enable an engaged consumer to better comprehend the net effect of the relevant derivative positions.¹⁷ In addition, Option 3 provides transparency of the most relevant information in the marketplace, supporting “the need for a low cost, high performing superannuation and retirement system.”¹⁸ Accordingly the proposed regulated form of PHD under Option 3 will lift Australia from an international transparency viewpoint. However, care should be taken in comparing Australia’s proposed regulatory PHD regime with those of other jurisdictions given that disclosure requirements for pension funds internationally vary significantly and are generally less rigorous than equivalent regimes for mutual funds.

7. How will you implement and evaluate your chosen option?

The proposal will be implemented by making use of the regulation making power in the *Corporations Act 2001*. The regulations will prescribe the way in which the information is required to be organised in line with the chosen option.

The first reporting date is 31 December 2021, and super funds have 90 days following this date to make the information publicly available, as outlined in the existing law. The regulations will be made by the Governor-General at an appropriate Federal Executive Council meeting.

Compliance with the requirements of these regulations will be overseen by ASIC, which will communicate with trustees about the requirements as needed.

Once implemented, interested stakeholders are welcome to provide feedback to Government on the effectiveness of the disclosure obligations. The Department of Treasury will give careful consideration to these views, liaise with ASIC and other regulators as necessary regarding any potential implementation issues and advise Government (as required).

Appendix A – Methodology and assumptions of the regulatory cost

It is anticipated that Option 2 will have a total annual compliance cost impact, averaged over 10 years, of \$5.2 million to business. These primarily relate to a combination of start-up costs and ongoing costs associated with understanding and then meeting the PHD requirements.

In the first year, the costs are estimated to be \$12.3 million and include costs associated with:

- Legal advice on how to implement the new regulations (\$0.8 million);

¹⁷ Australian Super 27 May 2021 Submission, page 3.

¹⁸ Aware Super, 25 May 2021, Submission into Your Future, Your Super Regulations and associated measures consultation, page 21.

- Investment in internal practices to collect and process data and capital investment in IT systems, along with costs to ensure compatibility with sourcing data from third party service providers (\$5.6 million);
- Training and time for the executive team, trustee directors and staff to understand the new obligations (\$1.5 million); and
- Assessment and reporting of portfolio holdings and record keeping (\$4.4 million).

For each year thereafter, the ongoing costs are estimated to be \$4.4 million per year for ongoing assessment, reporting and record keeping.

This brings the total cost over 10 years to \$52 million, and an average annual cost over 10 years of \$5.2 million.

These costs estimates are based on 156 superannuation funds at 30 June 2021¹⁹ and with the following assumptions:

- 10 hours of legal advice at \$500 per hour inclusive of GST.
- \$36,000 in estimated average upfront costs to undertake basic upgrades to systems and software inclusive of 20 hours of IT Consulting services at an estimated \$300 per hour inclusive of GST.
 - This is an estimated average across each super fund. Some funds may spend more, and some funds may spend less depending on the size of the fund and how the investment vehicles are structured.
- 10 Executives and 9 Directors each undertake 2 hours of training.
 - Australian Bureau of Statistics (ABS) data²⁰ is used for earnings of managers.
 - The 90th percentile rate is applied for Executives at \$107.06 per hour.
 - The 75th percentile is rate is applied for Directors at \$74.44 per hour.
 - These rates are multiplied by 1.75 to account for overhead costs.
- 40 staff hours required to prepare the training materials.
 - The hourly cost of staff is \$50 as per the median hourly rates for managers outlined in the ABS data, multiplied by 1.75 to account for overheads.
- 4 staff are required for 80 hours each per annum to undertake ongoing assessment and reporting of portfolio holdings.

The same \$50 hourly cost multiplied by 1.75 is applied.

Appendix B – Status of the RIS at each major decision point

Consultation on draft regulations

¹⁹ APRA's Quarterly Superannuation Statistics, Published 24 August 2021, <https://www.apra.gov.au/quarterly-superannuation-statistics>

²⁰ 6333.0 Characteristics of Employment, Australia, August 2020

A draft RIS was released for consultation at the time that the Exposure Draft regulations were released for public consultation on 28 April 2021. The draft RIS had not been reviewed by the Office of Best Practice Regulation at this time.

A second round of consultation was held on the draft regulations from 17 August 2021 to 31 August 2021. The draft RIS was not released for further consultation.

Final policy decisions and introduction of legislation

This final RIS has been prepared following extensive stakeholder consultation, prior to the Minister for Superannuation, Financial Services and the Digital Economy, Minister for Women's Economic Security making a final decision regarding the regulations to operationalise portfolio holdings disclosure.