

29/01/16

**By email:**

[superannuationtransparency@treasury.gov.au](mailto:superannuationtransparency@treasury.gov.au)

Ms Jenny Wilkinson  
Division Head  
Retirement Income Policy Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Madam,

**Re: AustralianSuper submission: Improving transparency – Portfolio Holdings Disclosure**

AustralianSuper welcomes the opportunity to make a submission responding to draft legislative amendments to the portfolio holdings disclosure regime.

AustralianSuper is Australia's largest single superannuation fund and is run only to benefit members. We don't pay commissions to anyone to recommend us, nor do we pay dividends to shareholders. We have over 2 million members and manage over \$90 billion of members' assets. Our sole focus is to provide the best possible retirement outcomes for our members.

AustralianSuper fully supports the disclosure of portfolio holdings by superannuation funds and is well advanced in the process of developing voluntary disclosure of our portfolio holdings to members.

AustralianSuper is concerned that the proposed legislation and regulation changes to give effect to portfolio holdings disclosure will not achieve the objectives of these reforms, as outlined in the Explanatory Statement<sup>1</sup> for these reforms. Further, we believe some will potentially harm the financial interests of superannuation fund members.

AustralianSuper is concerned that the disclosure of values of certain directly owned property and infrastructure investments will adversely affect members' interests where the value of those assets is not readily known by the market and need to be negotiated on purchase and sale. It may be an unintended consequence but it appears that these draft Regulations serve

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<sup>1</sup> EXPLANATORY STATEMENT **Issued by authority of the Minister for Small Business and Assistant Treasurer Corporations Act 2001** Superannuation Legislation Amendment (Transparency Measures) Bill 2015; Superannuation Legislation Amendment (Transparency Measures) Regulation 2015.

to restrict the capacity of Australian superannuation funds to negotiate the best prices for their members when dealing with overseas competitors for the same assets.

The Explanatory Statement indicates on page 1 that portfolio holdings disclosure (PHD) will 'achieve an appropriate balance between consumer outcomes and reduced industry compliance costs,' and that PHD is 'aimed at increasing the market, as well as members', awareness of what specific investments are being made by superannuation funds'.

AustralianSuper disputes the contention that consumers will gain an increased awareness of specific investments made by superannuation funds where disclosure of those investments is limited by an arbitrary exclusion process, and by limiting a look-through of investment vehicles.

#### Summary of issues:

- Disclosure of values of certain directly owned property and unlisted assets will adversely affect the financial interests of superannuation fund members who invest in those assets.
- Disclosure that is limited by a 5% exclusion where trustees can choose which assets are to be excluded from disclosure is too arbitrary and subject to manipulation. This provision creates an opportunity for funds to 'hide' investments in controversial assets.
- Limiting disclosure of investments to the first non-associated entity level limits the effectiveness and meaning of portfolio holdings disclosure as consumers will have less information about what assets their money is invested in.
- The requirement for disclosure of derivative positions does not give the consumer an understanding of the effect of those positions – accordingly, asset disclosure in this context may be misleading to consumers in some respects.
- The format disclosure requirements are inherently paper-based in their approach and not technologically neutral. For example, why should a website disclosure require 'bolding' of text as the only way of highlighting difference? This is hardly innovative in a website environment where for example, differences can be explained and defined much more easily with the use of text hover.
- There should be a requirement for disclosure of portfolio holdings to be displayed in a searchable format. Without this consumers will be unable to receive clear, concise and effective disclosure of content.
- The Regulations require disclosure of the number, price and total value of units held by the investment option in each relevant asset. The additional requirement to disclose the number of units and the value/price of each unit is potentially meaningless information for consumers. The value of units of each asset will be quite different, and unit holdings themselves will not be referable back to the

consumer's original investment. It should be sufficient to disclose the total value of the investment in the relevant asset.

- The prescribed presentation of asset information should be consumer tested to ensure reasonable comprehension by the target audience.

A full explanation of all these concerns is attached.

AustralianSuper would like the opportunity to discuss and provide further detailed information on a commercial-in-confidence basis regarding the potential effect of these proposals on our members' investments.

With this in mind, and if you have any further queries on this matter, please do not hesitate to contact me on (03) 8648 3847.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Louise du Pre-Alba".

Louise du Pre-Alba  
Head of Policy

## APPENDIX 1 AUSTRALIANSUPER SUBMISSION REGARDING PORTFOLIO HOLDINGS DISCLOSURE

### 1) Disclosure of value of assets

Disclosure of values of certain directly owned property and unlisted assets will adversely affect the financial interests of superannuation fund members who invest in those assets.

AustralianSuper is concerned that the draft requirements prescribe disclosure of values for unlisted assets such as direct property, and infrastructure. This is a concern as we see publishing this information for unlisted assets as disadvantageous to members and may not be in their best interests.

The concerns on disclosing values of key assets are applicable only to these categories of investments. This is because these assets are not listed or valued publicly, and traded much more rarely than listed stocks. Consequently, information disclosed to the market about asset pricing becomes inherently more sensitive and the following concerns arise:

- providing information that allows the market to discern the carrying value of an asset is potentially disadvantageous to our membership
- If this information was publicly available, it would impede our ability to achieve the best price for an asset in a sale process.
- It also has the potential to impede our ability to be able to invest in funds or assets where co-investors are concerned about this information being publicly available.

The existence of the '5% exclusion' does not ameliorate these concerns in any way, as key investment options offered by AustralianSuper (including its main MySuper investment option) invest more than 5% of the investment option in such assets.

Two investment options have investments in such assets that currently exceed the 5% level, and two other investment options have asset allocation ranges that enable investment decision-making that would exceed the 5% level as well.

(AustralianSuper can provide this information separately from this submission upon request).

### **Recommendation:**

That the *value* of an asset held in an investment option need not be disclosed in the following circumstances:

- Where disclosure of the value of the asset has the potential to disadvantage the financial interests of members investing in those assets; and
- Where the value of the asset is not otherwise known or reasonably ascertainable by the market and the public.

AustralianSuper considers that the investment in the asset itself is information that the member should know and that this information should continue to be disclosed.

AustralianSuper does not have any opposition to naming all of the assets that it invests in on behalf of its membership.

## **2) Disclosure and the 5% exclusion**

Disclosure that is limited by a 5% exclusion where trustees can choose which assets are to be excluded from disclosure by both name and value is too arbitrary and subject to manipulation. This provision creates an opportunity for funds to 'hide' investments in controversial assets, including tobacco and fossil fuels. This provision can be used to avoid political and reputational scrutiny – this is clearly not the same as protecting commercial and proprietary information. This goes against the core purpose of the legislation and would be potentially misleading where holdings are deliberately not disclosed that are not 'true to label' in relation to the investment option on offer.

It is worth noting that in a truly diversified investment option most individual investments made are likely to be less than 5% and will be available for exclusion from disclosure effectively at the trustees' discretion.

Arguably this provision may also lead to disclosure decisions that are not in the best interests of superannuation fund members as fund managers argue for their investments to be excluded through this 5% test so that the investments they make for trustees are not disclosed.

### **Recommendation:**

This provision be removed as it provides no substantive benefit to members or researchers who may wish to view the portfolio holdings disclosure of superannuation funds.

## **3) Disclosure and the removal of look-through requirements**

Limiting disclosure of investments to the first non-associated entity level limits the effectiveness and meaning of portfolio holdings disclosure as consumers will have less information about what assets their money is invested in. Information on specific assets may appear in multiple places, rather than one entry that lists a true position regarding investment in a particular asset.

The proposed legislation will now remove the real risk of superannuation funds being refused entry into some overseas private equity arrangements where overseas

fund managers did not want the value of their investments disclosed. However, the carve-out is too far-reaching and reduces meaningful disclosure of all investments, potentially undermining the objectives of portfolio holdings disclosure more generally.

Having said that, the requirements are unclear. Diagram 2.1 of the Explanatory Memorandum for the *Superannuation Legislation Amendment (Transparency Measures) Bill 2015* is identical to Example 1.1 of the Explanatory Statement. These flow charts both seek to demonstrate how portfolio holdings disclosure is made for direct investments, and through associated and non-associated entities respectively. The explanatory memorandum on page 18 concludes that assets of non-associated entities need not be disclosed, however, the commentary on page 13 of the Explanatory Statement concludes the opposite.

We presume that assets of non-associated entities need not be disclosed but that the amount invested in that entity should be disclosed. This should be made clearer in the explanatory material. We are unable to comment further on the cost and effect of this provision until these issues are clarified.

#### **4) Disclosure of derivative positions**

The requirement for disclosure of derivative positions does not give the consumer an understanding of the effect of those positions. Consideration needs to be made about other options that would more likely enable the consumer to comprehend the net effect of the relevant derivative positions.

##### **Recommendation**

More consideration needs to be made regarding disclosure of net risk positions, and how derivative positions may offset each other.

#### **5) Disclosure of Fixed Interest and Cash investments**

The draft legislation assumes the disclosure of the name of the asset only. It does not make reference on how to best present Fixed Interest and Cash holdings – we are concerned that the presentation of a list of potentially thousands of bills with differing expiry dates and interest rates will have no special meaning to consumers and the volume of information is likely to be confusing. Our preferred approach is to consolidate and present information by Issuer as this is most appropriate and meaningful to members.

##### **Recommendation**

More flexibility be permitted in the asset naming and data roll up regarding fixed interest and cash investments, so that members can focus their attention on the Issuer of those investments with one value.

## 6) Disclosure of property investments

AustralianSuper has developed a disclosure model for property that includes the name of the asset, and includes a google map reference for where the property is located. We would prefer to continue to use google map references for disclosure of property as this has more meaning to investing members. The prescriptive approach taken to the organisation of portfolio holdings disclosure in the regulations is not intended to accommodate such additional disclosures, even though this is achievable in a website environment and more relevant to investing member.

### Recommendation

That appropriate additional information be envisaged in the regulation drafting to foster more innovative and user friendly disclosure of portfolio holdings.

## 7) Prescriptive format disclosure requirements

AustralianSuper is concerned that there are a range of prescriptive format disclosure requirements that are costly and burdensome to comply with, potentially misleading and of little consumer benefit. The concerns are as follows:

- The format disclosure requirements are inherently paper-based in their approach and not technologically neutral.  
For example, why should a website disclosure require 'bolding' of text as the only way of highlighting a difference? This is hardly innovative in a website environment where differences can be explained and defined much more easily, for example with the use of text hover.
- There should be a regulatory requirement for disclosure of portfolio holdings to be displayed in a searchable format. Without this consumers will be unable to receive clear, concise and *effective* disclosure of content.  
It is concerning that trustees will be able to comply with these requirements presently by recording all information on a PDF file format and uploading it onto trustees' website. With potentially thousands of line items being produced it is difficult to see how consumers can easily navigate this information without a search function applying to this information.
- The Regulations require disclosure of the number, price and total value of units held by the investment option in each relevant financial product or property. The additional requirement to disclose the number of units and the price of each unit is potentially meaningless information for consumers. The value of units of each investment will be quite different, will be calculated differently and presumably 'created' where investments are not unitised. Unitholdings themselves will not be referable back to the consumer's original investment. It should be sufficient to disclose the total value of the investment in the relevant asset.

- The prescribed presentation of information resembles a profit and loss statement rather than a document designed for consumer comprehension and requires totalling information. Totalling information is less meaningful for consumers where a 5% exception to disclosure exists.
- The presentation of information unduly emphasises the investment in assets through other entities rather than providing a more meaningful aggregate position in relation to specified assets increasing costs and red tape to product issuers and providing substantially more lines of information of less relevance to consumers
- The presentation of disaggregated asset information impedes comprehension of investments made. Further it misrepresents to consumers that this amount is the entire investment in the specified asset. This is clearly not the case where investments are made through non-associated entities and the assets invested therein are not disclosed. The inclusion of the names of intermediary entities will add considerable amount of information to the report possibly reducing the ability of the consumer to comprehend the information. The legal structure under which assets are held is arguably less meaningful to consumers than information about the underlying assets themselves.

**Recommendation:**

- Review the format requirements and ensure that they are technologically neutral, and workable in a website environment. This would include removal of the requirement to bold certain information but use other digital functionality.
- Remove the requirement to disclose the number of units held in relevant financial products or property and the price of each unit.
- Include a requirement that the list of investments be searchable on the website for ease of consumer and researcher access and comprehension of information.
- It is preferable to provide aggregate asset information rather than disaggregated information on asset disclosure which is relevant only to investments in associated entities, and does not provide full asset disclosure in relation to the relevant investment option.
- The presentation of information should be consumer tested to ensure comprehension and accessibility for members, the key recipients of this information.