

SUBMISSION

Submission to Treasury
on the *Financial and
Auditing Requirements
for Superannuation
Funds: Exposure Draft Bill
and Explanatory
Materials*

13 September 2021

**The Association of Superannuation
Funds of Australia Limited**
Level 11, 77 Castlereagh Street
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T +61 2 9264 9300
1800 812 798 (outside Sydney)

F 1300 926 484

W www.superannuation.asn.au

ABN 29 002 786 290 CAN 002 786 290

File: 2021/30

Retirement, Advice and Investment Division
Treasury
Langton Cres
Parkes ACT 2600

via email: superannuation@treasury.gov.au

13 September 2021

Dear Sir/Madam,

Financial and Auditing Requirements for Superannuation Funds: Exposure Draft Bill and Explanatory Materials

The Association of Superannuation Funds of Australia (ASFA) is writing in response to your consultation on the *Financial and Auditing Requirements for Superannuation Funds: Exposure Draft Bill and Explanatory Materials* (Exposure Draft Bill) released for feedback and comment on 12 August 2021.

About ASFA

ASFA is a nonprofit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$3.3 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing over 90 per cent of the 17 million Australians with superannuation.

GENERAL COMMENTS

ASFA supports transparency for members and improving member outcomes.

Members have, however, raised concerns about aspects of what has been proposed. In particular, some of the requirements will result in significant obligations that will manifest in increased costs to members with little in the way of incremental benefit.

Given this, it is critical that a comprehensive cost / benefit analysis of the Exposure Draft Bill be performed prior to it progressing through the Parliament.

SPECIFIC COMMENTS

ASFA member organisations have raised some issues about specific aspects of the Exposure Draft Bill which is the subject of this consultation. These are outlined in the Specific Comments section of the submission.

Should you have any queries or comments in relation to the content of our submission, please contact me on (03) 9225 4021 or via email to fgalbraith@superannuation.asn.au.

Yours sincerely

Fiona Galbraith
Director, Policy

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Financial and Auditing Requirements for Superannuation Funds: Exposure Draft Bill and Explanatory Materials

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1. General observations

1.1 Overall policy intent

In releasing the Exposure Draft Bill it was stated that superannuation funds are subject to less stringent financial reporting obligations than public companies and registered schemes and the reforms will increase the transparency of financial information and better enable regulators' oversight of superannuation funds.

Importantly, superannuation funds already have stringent regulatory obligations and are subject to increasing requirements with respect to data reporting and disclosure.

In particular, we have concerns that

- it is unclear what is the problem that the Exposure Draft Bill is trying to address
- the proposals will significantly, and unnecessarily, increase costs, with limited benefit to members.

1.2 'Alignment' of financial reporting with listed companies

The proposed Exposure Draft Bill seeks to apply the same requirements to superannuation funds as those that apply to listed companies.

It is important to note in this context that superannuation funds and listed companies are different entities, serving different purposes, and their financial statements should reflect this.

The Australian Accounting Standards Board Conceptual Framework reflects this in its statement with respect to general purpose financial reporting, as follows:

*'The objective of general purpose financial reporting is to provide financial information about the reporting entity that is useful to **existing and potential investors, lenders and other creditors** in making decisions relating to providing resources to the entity.*

Those decisions involve decisions about:

- (a) buying, selling or holding equity **and debt instruments**;*
- (b) **providing or settling loans** and other forms of **credit**; or*
- (c) **exercising rights to vote on**, or otherwise influence, **management's actions** that affect the use of the entity's economic resources' (emphasis added)¹*

Superannuation funds are subject to an accounting standard that is tailored specifically to recognise the different users of superannuation financial statements – AASB 1056.

AASB 1056 states as follows: -

*'The objective of this Standard is to specify requirements for the general purpose financial statements of superannuation entities **with a view to providing users with information useful for decision making in a superannuation entity context**' (emphasis added).²*

¹ AASB Conceptual Framework for Financial Reporting May 2019, paragraph 1.2
https://www.aasb.gov.au/admin/file/content105/c9/Conceptual_Framework_05-19.pdf

² AASB 1056, Superannuation entities, paragraph 1 https://www.aasb.gov.au/admin/file/content105/c9/AASB1056_06-14_COMPmay19_01-20.pdf

1.3 Regulatory overlap and duplication

One of the reasons stated for introducing these proposals is to better enable regulatory oversight.

It is important to note in this context that:

1. Granular financial data already is provided to APRA regularly and will only increase as the three phases of APRA's Superannuation Data Transformation (SDT) project are implemented. As the first industry required to report data to APRA through its new collection system, APRA Connect, as the incumbent system D2A (Direct to APRA) gradually is phased out, superannuation funds already have expended considerable resources in setting up systems to report data via APRA Connect.
2. It is expected that APRA and ASIC work closely together. They have executed a Memorandum of Understanding (MOU) that makes it clear that the two agencies should share information and that they have agreed to minimise duplication in reporting. The MOU states as follows

*'The agencies agree to engage on industry data collection and **seek to minimise duplication in statistical reporting by industry**' (emphasis added).³*

3. The AASB Conceptual Framework states financial reports are not primarily directed to regulators

*'Other parties, such as regulators and members of the public other than investors, lenders and other creditors, may also find general purpose financial reports useful. However, **those reports are not primarily directed to these other groups**' (emphasis added)⁴.*

4. Treasury has a deregulation agenda and recently ASIC has set up a unit dedicated to focusing on minimising regulatory costs.
5. ASFA has advocated that
 - it is critical that the reporting of data/information to government be cost effective, balancing the benefits against the costs to consumers
 - it should be mandatory for financial regulators to collaborate on data collection/use
 - the current practice where regulators collect similar data in different forms is highly inefficient and increases both risk and costs.⁵

An outline of ASFA's submission to Treasury with respect to its consultation on *Financial Regulator Coordination and Information Sharing* is attached in the Annexure.

Further to this, member organisations have indicated that the reporting that a super fund submits to APRA far exceeds the reporting that a publicly listed entity makes to the Australian Securities Exchange (ASX).

Given the current level of the reporting of data to APRA, and the imminent significant increase in the volume of data reported under the SDT project, enabling regulatory oversight is not a valid reason to introduce additional data reporting obligations that overlap with existing reporting obligations.

Recommendation 1

Duplicated reporting requirements are unnecessary and should be removed.

³ APRA & ASIC MOU dated 28 November 2019, paragraph 20

⁴ Op cit, paragraph 1.10

⁵ ASFA, Submission to Treasury — Financial Regulator Coordination and Information Sharing, 29 January 2020
https://www.superannuation.asn.au/ArticleDocuments/1452/202003_Treasury_Financial_Regulator_Coordination_and_Information_Sharing.pdf.aspx?Embed=Y

1.4 No Regulatory Impact Statement (RIS)

It is disappointing that there is no draft Regulatory Impact Statement (RIS) in the Exposure Draft legislation.

The RIS process seeks to assist 'best practice' design and implementation of regulatory policy through including a detailed cost-benefit analysis of proposed regulatory change. A RIS should be included with proposed regulatory changes and incorporate an assessment of the impacts of the proposed changes on different stakeholder groups – in this context there should be a particular focus on the increase in costs that will be borne by the members of superannuation funds.

1.5 Material increases in costs and risk

Member organisations have indicated they have not had the opportunity to undertake a detailed analysis of the costs that will be involved in complying with the obligations under the Exposure Draft Bill.

One entity has estimated that it is likely to incur an additional cost for audit of approximately \$1 to 2 million per year and for processing and valuations another \$1 to 2 million per year. Obviously the increases in costs will be a function of the size and complexity of the funds, but in every case they will be material.

Another fund has indicated that, in the teams that support the preparation of financial statements, they would require between 35 to 45% more staff to manage the additional requirements. All super funds will be in a similar position and so will be competing for candidates to fulfil these roles, from an already reduced talent pool, which will be demanding, serve to push up costs further and, to the extent funds may be compelled to engage sub optimal candidates, will introduce unnecessary risk.

The sheer volume of regulatory change currently being managed, as well as ongoing resourcing requirements, is placing inordinate demands on already stretched resources. This will be exacerbated by aspects of these proposals, including the preparation of half yearly statements and, depending on how the definition is interpreted and applied, the possible application to sub-funds.

In some cases, to ease the resourcing burden, an uplift in systems capability may be required but any change would take around two years to develop and implement before it would yield any tangible benefits.

1.6 Adverse effect of increased costs on member outcomes

These proposed changes will necessitate considerable time and cost to implement, including internal resourcing costs and amounts paid to third-party providers.

Ultimately this cost will be borne by members. Given the marginal benefit at best, it is unclear how implementing these proposals would be considered to be in the best financial interests of members.

1.7 Significant information already available to members

Members already receive, or have access to, significant information that is more relevant to their interest in a super fund, including detailed information with respect to fees and costs, member statements and often daily valuations of their interest.

Measures such as fees and costs disclosure, as explained in ASIC Regulatory Guide 97 (RG 97), and Your Future, Your Super have increased requirements with respect to the information that must be provided to members. Members now have access to the MySuper comparison tool on the ATO website, that provides information with respect to fees and returns, and the APRA heatmap, that provides APRA's analysis of the fees, returns and sustainability of MySuper products.

The annual financial statements, financial reports, directors' reports, and other reports such as the remuneration report, as well as the annual report to members containing abridged financial information, already are available on super entities' websites. Super fund members are able to request the full financial statements of the RSE and, with respect to defined benefit schemes, the auditor's report.

From funds' experience this information on the website is rarely accessed and those accessing it are more likely to be people in the superannuation industry, or internal staff, as opposed to members of the fund.

1.8 Need for a comprehensive cost / benefit analysis of the Exposure Draft Bill

Given the significant increase in costs that will be imposed by the Exposure Draft Bill, as outlined above, there is a need to perform a comprehensive cost / benefit analysis of the new obligations.

In particular, the requirement to produce half yearly reporting, and for sub-funds to prepare financial reports, will be a source of considerable additional costs. As there is, however, uncertainty about some aspects of the obligations, it is difficult for the industry to quantify the additional costs with accuracy.

Given this, there is a need to consult further with the industry about the detail of some of the requirements, in particular half yearly reporting and the definition of 'sub fund'.

Recommendation 2

There should be further consultation about half yearly reporting and the definition of 'sub fund'.

Once there is clarification about the nature and scope of the requirements there should be consultation with the industry to obtain information with respect to the costs that will be incurred in meeting those requirements. This information would then form the basis of a cost / benefit analysis.

Recommendation 3

There should be a consultation to obtain information about the costs to meet the new obligations.

Recommendation 4

A cost / benefit analysis should be performed before the Exposure Draft Bill is progressed further.

1.9 Absence of regulatory guidance / clarity

Without regulators' guidance or further clarity around some of the details of the legislative requirements, that will affect operational design, it will be hard for RSE providers to analyse the requirements, determine the operational build and assess its impact.

Areas where there is a need for guidance / clarity include:

- auditing – clarity has been requested regarding the detail of the auditing requirements
- balance calculation – further clarity has been requested with respect to the requirements regarding the balance calculation and possible inclusions / exclusions
- ASIC reporting – if this is to proceed, and not be achieved through APRA's SDT project and reporting via APRA Connect – the industry will need to be advised of details with respect to the portal, format, validations, credentials for access and authorisations in order to be able to design, develop, test, deploy and implement any reporting to ASIC solution
- disclosure requirements for the RSE themselves versus the RSE licensee – further clarity has been requested with respect to the disclosure requirements for the different entities.

In particular, the interpretation and application of the definition of 'sub fund' is a cause of considerable concern to members. Please refer to section 2.3 below for more detail.

1.10 Consultation on Exposure Draft Bill – timing

The consultation period – from late 12 August to 8 September (later extended to 13 September) – coincided with what is the busiest time during the financial reporting cycle.

During this period, prior to 30 September, those involved in preparing and auditing the financial reports of super funds and trustees, as well as of those of other entities, have been heavily engaged in this process, with little or no capacity to engage in this consultation.

Given this, the ability of our member organisations to analyse and assess the implications of the Exposure Draft Bill, and to provide input into this submission, has been extremely limited. This poses a significant risk that there may be unintended consequences or that the Exposure Draft Bill does not meet its objectives in an efficient manner.

2. Specific comments

2.1 Timing – resourcing and capability – new processes and procedures

The Exposure Draft Bill will create a need for significant additional resources, to develop and deploy new processes and procedures and on an ongoing basis, as well as material increases in capability, including a need for new information technology systems.

The legislation as proposed will impose a significant regulatory burden across the industry to build another reporting system within a very short timeframe. There needs to be sufficient time allowed to consult with the industry on the details to enable RSE licensees to progress the design, and then to build, test, deploy and implement, a reporting solution.

This will necessitate a later start date.

Furthermore, APRA's Superannuation Data Transformation (SDT) project, involving a staged 'go-live' approach over the next two years until 30 June 2023, requires RSE licensees to be the first industry to utilise APRA's new data reporting system to report a considerably expanded, extensive volume of data. Requiring RSE licenses to deliver against new financial reporting obligations at the same time they are implementing the new data reporting standards under the SDT project will add considerable stress to already constrained resources.

Given that the legislation is proposed to commence from 1 July 2022, there will be a very short window for RSE licensees to implement the necessary changes after the legislation has been passed. Meeting an implementation date of 1 July 2022 will be very challenging and will impose additional, unnecessary, costs and risk.

Delaying the commencement date to 1 July 2024, with the prior year comparison being for the year ending 30 June 2023, would allow sufficient time for funds to be able to design, build, test, deploy and implement the necessary infrastructure and capability.

Recommendation 5

The commencement date should be delayed to 1 July 2024.

2.2 Half year reporting

Given the data reported to APRA, and the apparent focus of members on investment performance and fees, the main issue for our member organisations is what they consider to be the unnecessary introduction of a requirement to complete half-yearly financial reports.

Regulators

RSE licensees already are required to report extensive data, largely equivalent to the data found in financial statements, to APRA on a regular basis. Should the half yearly reporting requirement be to prepare what is essentially abridged financial information, this largely would be the same information that super funds already report to APRA on a quarterly basis.

Super funds have a dedicated accounting standard, AASB 1056, and already prepare annual financial statements and lodge annual reports with APRA. Importantly AASB 1056 is only with respect to full year reporting – if there is an expectation that the Australian Accounting Standards Board amend AASB 1056 to specify the half yearly reporting requirements this would take some time.

Members

There are other channels whereby members can obtain information about fund performance.

Data about RSEs is fed into APRA's MySuper Product Heatmap, designed to enhance member outcomes by publicly identifying which MySuper products are underperforming, as well as the annual performance test performed by APRA, and the comparison tool hosted by the ATO, that were introduced as part of Your Future, Your Super.

In its review of first round of superannuation fund annual member meeting ASIC noted that members were most interested in fund performance and fees, the superannuation guarantee, cybercrimes and the impact of COVID-19.⁶ While information with respect to fees and costs is important to members, it is questionable the extent to which members will have regard to financial reports.

Cost / benefit

The requirement to prepare half-year reports will impose a significant cost on super funds and it is not readily apparent that there will be any discernible benefit to members or regulators.

Furthermore, the half year reporting requirement would result in an additional imposition for defined benefit actuarial reviews, as well as a possible requirement on defined benefit employer sponsors to meet 100% funding.

Furthermore, the potential interplay of a requirement for half yearly reporting with reporting at the level of sub funds would significantly increase the workload for affected funds and increase costs substantially, for negligible benefit to any stakeholder.

Recommendation 6

The requirement to prepare and lodge financial reports, directors' reports and auditing reports for the half year should be removed.

Should the requirement to produce half yearly reported proceed then, in order to lessen the stress on resources and ameliorate the effect on fund costs, in addition to a later commencement date for the requirement the timeframe for reporting of 75 days should be extended to 120 days.

Recommendation 7

Should half-yearly reporting proceed the reporting timeframe of 75 days should be extended to 120 days.

2.3 Definition of 'sub-fund'

The definition of 'sub fund' includes that the interest of each beneficiary in a segment be determined by reference only to the conditions governing that segment. It appears as though the definition is not satisfied if the interest of a beneficiary is determined by reference to a condition that applies to members in another segments of the product.

It is not clear what segments are intended to be caught by the definition of 'sub-fund', and therefore it is difficult to determine whether the requirement to prepare separate financial reporting may be appropriate, how much it would cost. In the absence of clarification and guidance, member organisations are concerned about how the definition of 'sub-fund' will be interpreted and applied by regulators, as there are significant implications for the detail and amount of work involved depending upon the approach that is adopted.

⁶ ASIC Media Release 21-205MR, 6 August 2021 <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2021-releases/21-205mr-asic-reviews-the-first-round-of-super-fund-annual-members-meetings/>

In particular, the question has been raised as to whether the definition of 'sub-fund' captures corporate sub-plans within a master trust. There are hundreds of corporate sub-plans in master trusts, some of which are quite small and some that are winding-down.

Preparing financial statements for each sub-plan, and having them audited, would impose significant costs, mostly borne by the members of the sub-plan, for little additional benefit. With respect to defined benefits schemes this may necessitate additional actuarial valuations that will add further to the costs borne by members.

Furthermore, financial reports of employer sub-plans may contain information that is confidential to the employer that it is not appropriate to disclose publicly. Where the employer sub-plan is small, this may extend to the disclosure of personal member information as well. There is an ASIC exemption, with respect to disclosure under section 29QB of the *Superannuation Industry (Supervision) Act 1993*, that recognises and provides for these issues.⁷

Member organisations have indicated that the primary user consideration for sub-fund reporting is the risk profile of any defined benefit interest and position and that this already is communicated adequately through the current AASB 1056 required disclosures in the RSE's financial statements.

Accordingly, our member organisations believe there should be further consultation with respect to the definition of 'sub-fund' and, in particular, the significant implications of sub fund reporting on increasing costs to fund members.

Recommendation 8

There should be further consultation with respect to the definition of 'sub-fund' and the cost implications.

2.4 Preparation of annual reports – disclosure required by regulations

There are references in the Exposure Draft Bill to enabling regulations that could prescribe additional requirements with respect to disclosure.

Members have expressed concern about additional requirements being imposed without a bill being debated in Parliament, which would provide stakeholders with an opportunity to provide input before the bill is passed.

Given the significance of the imposition of additional requirements with respect to disclosure in annual reports, if at all possible any requirements should be included in the Exposure Draft Bill and not in subsequent regulations.

Recommendation 9

Additional requirements with respect to disclosure in annual reports should be included in the Exposure Draft Bill and not in subsequent regulations.

⁷ ASIC Superannuation (RSE Websites) Instrument 2017/570 <https://www.legislation.gov.au/Details/F2018C00397>

ASFA Submission to Treasury — Financial Regulator Coordination and Information Sharing

29 January 2020

ASFA advocated that

- it is critical that the reporting of data/information to government be cost effective, balancing the benefits against the costs to consumers
- there is a need for financial regulators to share data – we were concerned there appears to be a reluctance to share data but instead a tendency to request more data be reported
- it should be mandatory for financial regulators to collaborate on data collection, so that data
 - is reported only once – through centralised, consistent, points of data collection
 - is accessed/shared by regulators as necessary
- the current practice, where regulators collect similar data in different forms, is highly inefficient and increases both risk and costs –ultimately consumers pay for this for no discernible benefit
- it is important to avoid the duplication of data reporting
- there is a need for common data processes/standards/taxonomies and dictionaries
- there is an urgent need to explore the potential for centralised reporting – ideally one agency (ATO) for personal data and one agency (potentially APRA) for non-personal data
- government agencies should be compelled to access data reported to other agencies
- the ongoing Superannuation Data Working Group (SDWG), of which Treasury and the regulators are members, was established to:
 - identify ways to improve consistency and scope of data collection and release
 - evaluate the costs and benefits of reporting changes
 - identify where legislative change may be needed to support better data collection and it should progress its work to achieve these outcomes
- Treasury should take opportunity to seek the expansion of the Multi Agency Data Integration Project to support multi-agency collaboration with financial regulators
- there is a need for appropriate timeframes – commensurate with the nature, scope and scale of reporting changes – to implement any changes to data reporting
- implementation timeframes should not commence until the requirements are finalised and communicated – generally a minimum of 12 months after finalisation of the requirements
- there is a need for appropriate consultation on changes to data reporting
 - allowing sufficient time for stakeholders to engage and provide considered feedback
 - if a staged consultation, providing feedback from previous stages with sufficient time to enable stakeholders to review it prior to the next round of consultation.⁸

⁸ ASFA, *Submission to Treasury — Financial Regulator Coordination and Information Sharing, 29 January 2020*
https://www.superannuation.asn.au/ArticleDocuments/1452/202003_Treasury_Financial_Regulator_Coordination_and_Information_Sharing.pdf.aspx?Embed=Y