

# SUBMISSION

Submission to Treasury —  
Consultation on Breach  
Reporting Rules —  
Exposure draft  
regulations and  
explanatory statement

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9 April 2021

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File: 2021/11

Regulatory Powers and Accountability Unit  
Financial System Division  
Treasury  
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Via email: [Breach.Reporting@treasury.gov.au](mailto:Breach.Reporting@treasury.gov.au)

9 April 2021

Dear Sir/Madam,

**Consultation on Breach Reporting rules**

***Schedule 11 of the Financial Sector Reform (Hayne Royal Commission Response) Act 2020***  
**Exposure draft regulations and explanatory statement (ED Regs)**

The Association of Superannuation Funds of Australia (ASFA) is writing in response to your consultation on exposure draft regulations and explanatory materials for the breach reporting rules in *Schedule 11 of the Financial Sector Reform (Hayne Royal Commission Response) Act 2020* (ED Regs), released for feedback and comment on 10 March 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 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 16 million Australians with superannuation.

**GENERAL COMMENTS**

ASFA has consulted with our member organisations on the ED Regs and has received the following feedback from members.

Member organisations have expressed concern about some of the wider ramifications of the changes to breach reporting requirements and remain concerned that it will be quite onerous to comply with the new breach reporting regime.

It has been noted that the ED Regs have assisted to a certain extent by removing some items from the 'deemed significance' test.

Members have observed that there remains a degree of uncertainty about certain aspects of the amended breach reporting and remediation provisions in the *Corporations Act 2001*. While we do not necessarily believe that the regulations will be able to address these uncertainties, members have suggested that ASIC may be able to issue further guidance to assist financial services licensees with, for example:

- how to approach the interpretation of when there is an 'investigation' – members have noted that the comments in the Explanatory Memorandum to some extent are helpful but consider that there is still a lot of scope for interpretation
- how to approach the interpretation around 'first knowing' that there are reasonable grounds to believe that a 'reportable situation' has arisen
- where a financial services licensee becomes aware of a breach by another financial services licensee – how to approach the interpretation around the requirement to lodge a notice with ASIC, and to provide a copy of the breach notice to the other licensee
- how to manage the complexity around the fact that potentially a licensee may be required to report some breaches to both APRA and ASIC but there will be different tests as to whether a breach is reportable depending on the section(s) that have been breached and the regulator with whom the report is to be lodged.

Should you have any queries with respect to this submission, please contact me on (03) 9225 4021 or via email to [fgalbraith@superannuation.asn.au](mailto:fgalbraith@superannuation.asn.au).

Yours sincerely

Fiona Galbraith  
Director, Policy