

Last Updated: April 2024

SECTION 1 – INTRODUCTION

1. The Association of Superannuation Funds of Australia Ltd (**ASFA**) has been operating since 1962 as the peak policy, research and advocacy body for Australia’s superannuation industry.
2. ASFA is an industry association of member superannuation fund trustees, insurers and other service providers that operate in the same industry and will often be competitors. ASFA has prepared this Policy and Protocols to assist ASFA and ASFA members, their related bodies corporate, directors, officers and employees (**Member Parties**) in understanding and complying with their obligations under the *Competition and Consumer Act 2010* (Cth) (**CCA**) and their obligations relating to collective action by investors under the *Corporations Act 2001* (Cth) (**CA**).
3. This Policy and Protocols have been put in place to govern the dissemination of information, and communications between Member Parties at ASFA meetings and in respect of matters which are or may be considered by ASFA or Member Parties whether before, at or after such meeting (**ASFA Meeting Activities**).
4. ASFA provides an important collective voice for our members. ASFA members regularly share information, discuss issues, develop practical solutions and consider ideas all to advance the outcomes for Australians through a strong superannuation system. This Policy and Protocols is designed to enhance the role that ASFA plays as the voice of super and the peak body for the superannuation sector.
5. It is intended that this Policy and Protocols provide guidance in relation to all ASFA Meeting Activities, including:
 - a. Meetings of ASFA Board;
 - b. ASFA Committee meetings;
 - c. ASFA policy council meetings;
 - d. Meetings organised for specific delegated committees or working groups;
 - e. Meetings with Government, regulators and other third-party stakeholders;
 - f. ASFA Associated Service Provider meetings; and
 - g. Any other formal or informal meetings or discussions involving ASFA and Member Parties.

SECTION 2 – POLICY STATEMENT

6. It is the policy and objective of ASFA and each of its members, to observe and strictly comply with all applicable provisions of the CCA (and any other applicable instruments, such as authorisations granted by the Australian Competition and Consumer Commission (**ACCC**))

and the CA.

7. ASFA will not support, or knowingly be party to, any agreement, understanding or practice that may contravene the CCA and/or other applicable instruments or the CA. Member Parties should raise any compliance concerns during meetings and discussions, in which case discussions will be stopped until legal advice is obtained.
8. We note that it is important to avoid not only contraventions of the CCA or CA, but also conduct that could create the appearance of a contravention. Should ASFA consider it appropriate in particular circumstances to depart from the Policy and Protocols, ASFA will seek independent legal advice, including where appropriate, advice in relation to the processes available for engagement with the ACCC or ASIC, as appropriate. In all instances, this Policy and Protocols will apply unless there is written notification that a departure has been deemed appropriate.
9. When competitors get together the risks of breaching competition laws can occur, even if not intended. Breach of those laws can have severe financial consequences for the Members involved. This includes for the individuals involved. Engaging in cartel conduct carries with it the risk of jail terms.
10. ASFA believes that effective investor engagement can enhance the long-term performance and corporate value of an entity for investors. Investors may cooperate and coordinate their actions concerning an entity in which they have invested, in the interests of promoting long-term value for investors. However, the takeover and substantial holding provisions of the CA place limits on cooperation between investors to avoid control over an entity being acquired inappropriately.
11. This Policy and Protocols apply to all ASFA Meeting Activities. All Member Parties attending ASFA Meeting Activities must:
 - a. read and familiarise themselves with this Policy and Protocols, as may be updated from time to time; and
 - b. familiarise themselves and comply with the law as it relates to anti-competitive conduct and collective action by investors.

SECTION 3 – COMPETITION LAW PROTOCOLS

12. The Competition Law Protocols relate to compliance with the CCA and any other applicable instruments, such as authorisations granted by ACCC.
13. ASFA and Member Parties will not engage in conduct in ASFA Meeting Activities which is prohibited in the CCA, including:
 - a. The prohibition on making or giving effect to a contract, arrangement or understanding that contains a cartel provision. A cartel provision is one that relates to:

- i. price-fixing;
 - ii. restricting output in production or supply;
 - iii. allocating customers, suppliers or territories; or
 - iv. bid-rigging,

and is made or attempted to be made between parties that are competitors or potential competitors.
 - b. The prohibition on making or giving effect to agreement, arrangement or understandings which has the purpose, effect or likely effect of substantially lessening competition.
 - c. The prohibition on engaging in a concerted practice, which is any form of cooperation that substitutes the uncertainty of competition, and that has the purpose, effect or likely effect of substantially lessening competition.
 - d. The prohibition on misuse of market power where it has the purpose, effect or likely effect of substantially lessening competition.
 - e. The prohibition on forms of conditional supply or acquisition of products or services, known as exclusive dealing, where it has the purpose, effect or likely effect of substantially lessening competition.
 - f. The prohibition on competitors or potential competitors agreeing, or attempting to agree to boycott supplier or purchasers.
14. Competitively sensitive information will not be discussed or exchanged during ASFA Meeting Activities.
15. All meetings carried out under the auspices of the ASFA must also comply with the following protocols:
- a. Participants must not attempt to contravene, breach, be involved in, authorise, condone, aid, abet or counsel any breach of the CCA by other parties.
 - b. If there is any suggestion or possibility that a topic, discussion or activity at a meeting may involve contravention of the law as it relates to anti-competitive conduct, a warning must be given to cease the discussion or activity immediately. If this warning is not heeded, the meeting must be terminated, and the matter reported to the ASFA Chief Executive Officer.
 - c. As a minimum, at the first committee meeting each year and whenever a new member first attends a meeting, the Chair or Secretary is required to draw the members' attention to these protocols at the start of the meeting.
 - d. At the commencement of each meeting, the these protocols must be brought to the attention of all attendees by the Chair or the meeting Secretary.
16. All ASFA committees, policy councils and working groups will be provided with a copy of this Policy and the Competition Law Protocols. Members will ensure that each individual from its organisation who attends ASFA Meeting Activities is aware of the Competition Law Protocols and the prohibitions under the CCA.

SECTION 4 – COLLECTIVE ACTION BY INVESTORS PROTOCOLS

1. The Collective Action by Investors Protocols relate to compliance with the CA and any other applicable instruments.
2. ASFA and Member Parties may engage in collective action to promote corporate governance arrangements for the long-term benefit of an entity and its investors. However they will do so consistently with the takeover and substantial holding provisions of the CA.
3. All meetings carried out under the auspices of the ASFA must also comply with the following protocols:
 - a. ASFA and Member Parties may, except where there are circumstances where the takeovers and substantial holding provisions would apply:
 - i. Discuss voting at a proposed meeting of an entity; issues and problems of an entity and potential solutions; possible matters to be raised with an entity's board; a resolution to be voted on at a meeting; or individual voting intentions on a resolution;
 - ii. Recommend that other investors vote in a particular way; and
 - iii. Jointly make representations to the entity's board about the entity's policies or practices or particular action that the entity might consider taking.
 - b. ASFA and Member Parties will not, without relief from the Australian Securities & Investments Commission:
 - i. Jointly sign with other investors a notice:
 - requisitioning a general meeting of the entity for the purpose of putting forward a resolution relating to the composition of the board or the entity's affairs; or
 - requesting a resolution relating to the composition of the board or the entity's affairs be considered at a general meeting of the entity;
 - ii. Formulate joint proposals relating to board appointments or a strategic issue; or
 - iii. Accept an inducement to vote or act in a specific way, agree on a plan concerning voting or limit their voting power by granting another investor their irrevocable proxy.
 - c. ASFA and Member parties will not:
 - i. Act in contravention of the insider trading laws;
 - ii. Involve themselves in the management of an entity to the extent they may be acting as shadow directors; or
 - iii. Engage in misleading or deceptive conduct in any public statements in relation to any investor engagements.
 - d. Participants must not attempt to contravene, breach, be involved in, authorise, condone, aid, abet or counsel any breach of the CA by other parties.
 - e. If there is any suggestion or possibility that a topic, discussion or activity at a meeting may involve contravention of the CA, a warning must be given to cease the discussion

- or activity immediately. If this warning is not heeded, the meeting must be terminated, and the matter reported to the ASFA Chief Executive Officer.
- f. As a minimum, at the first committee meeting each year and whenever a new member first attends a meeting, the Chair or Secretary is required to draw the members' attention to these protocols at the start of the meeting.
 - g. At each meeting's start, these protocols will be brought to the attention of all attendees by the Chair or the meeting Secretary.
4. All ASFA committees, policy councils and working groups will be provided with a copy of this Policy and Protocols. Members will ensure that each individual from its organisation who attends ASFA Meeting Activities is aware of these Protocols.