



20 February 2018

Mr Darren McShane  
Expert Review of Superannuation Fees and Cost Disclosure Regime  
ASIC

**By email:** [Kathy.neilsen@asic.gov.au](mailto:Kathy.neilsen@asic.gov.au)

Dear Mr McShane,

**Re: Expert Review of Superannuation Fees and Costs Disclosure Regime**

**In brief:**

AIST supports the Expert Review. Our key concerns with the Disclosure Regime stem from members being placed in a position of not being able to compare products, the inability at system level of comparing fees, costs and returns, and the legislative onus to both collect and report not including investment managers which hold the data in the first place. AIST strongly advocates that there is a need to clearly articulate the objectives and the underlining principles for the Regime, which (in being applied) would lead to a better outcome for both consumers and the system as a whole.

**Expert Review of Superannuation fees and costs disclosure regime**

Thank you for meeting with the Australian Institute of Superannuation Trustees (AIST) and several of our member funds recently. I reiterate AIST's support for the Expert Review of the superannuation fees and costs disclosure regime.

This submission sets out AIST's recommendations for the issues the Expert Review should address.

**Who is AIST**

At our meeting you asked for information about AIST. AIST is a national not-for-profit organization and is the principal advocate and peak representative body for the \$700 billion profit-to-member superannuation sector. AIST represents 62 superannuation funds including corporate, public sector and industry superannuation funds in Australia and a number of Pacific Island funds.

**The importance of accurate, consistent fees and costs disclosure**

Unlike all other financial products, superannuation is compulsory. The superannuation system is also the vehicle for delivering important social and fiscal policies designed to deliver people economic security in retirement and reduce pressure on the Age Pension. 12.3 million workers hold the product and the Government underwrites the system in the form of \$30 billion per year in tax concessions. In this context, an effective fees and costs disclosure regime is imperative.

## **Our approach to ASIC's review**

AIST has engaged constructively with ASIC and other parts of the superannuation industry over the course of the review. We have a small policy team of 4.5 full time equivalent staff. One of our most senior and experienced policy staff has worked almost exclusively on the review over several years. The level of resourcing allocated to the review reflects the importance to our sector of achieving effective fees and costs disclosure for members.

AIST also worked with King and Wood Mallesons to produce a toolkit to assist profit-to-member funds to comply with the fees and costs disclosure regime. The draft Toolkit was released to members in June 2017. AIST subsequently agreed to release the Toolkit to a broader Industry Working Group (IWG) which continued to add to the Toolkit. The IWG released an updated version of the Toolkit in the form of whole-of-industry guidance in November 2017.

AIST looks forward to continued and constructive engagement throughout the Expert Review process.

## **Objectives of superannuation fees and costs disclosure regime**

One of the challenges of ASIC's review of superannuation fees and costs is that the legislative framework does not set out the objective of the fees and costs disclosure regime. Despite repeated recommendations by AIST and other stakeholders that ASIC should articulate clear and implementable objectives for the regime, ASIC declined to do so. In the absence of such clear objectives, it is very difficult to measure whether the regime is effective. ASIC has been unable to clearly articulate to AIST and other stakeholders why the specific measures are needed to improve comparability. This flows, we believe, from the lack of a clear and implementable set of objectives.

AIST's view is that a key objective of the regime is to enable members to understand and compare the fees and costs of different products. The regime should also encourage members to give appropriate weight to fees and costs alongside other factors. While fees and costs are important, the most important factor in comparing superannuation products is long term net returns – this determines how much retirement income members will get; incorporates fees and costs over the long term; and is the best use of the limited attention and capacity of most members to dedicate to switching decisions.

We note that ASIC has publicly stated that the objective is to improve the transparency and comparability of fees and costs for superannuation funds and managed investment schemes. While the more granular objectives have not been stated, AIST strongly advocates that RG97 has not met this publicly stated objective but – in many cases – actively works against achieving it. The guidance has generated confusion, provided an environment which enables differing interpretations, and has created legal uncertainty and inconsistency between profit-to-member and for-profit sectors.

AIST advocates that a further key objective is the enablement of benchmarking fees, costs, and net returns. Without this capability, neither members, trustees, nor regulators will be placed

in a position to know whether the long-term net returns to members could have been better. Such benchmarking would also be a key indicator in determining the competitiveness and efficiency of the system.

The regime does not achieve – and in certain circumstances appears to be in conflict - with these objectives.

### **Consumer protection principles should be applied to RG97**

AIST refers to (and obviously supports) the OECD's *G20 High Level Principles on Financial Consumer Protection*<sup>1</sup>. As far as fee disclosure is concerned, these Principles may be summarised as follows:

- Standardisation, comparability, and consumer testing are all desirable.
- A level playing field across financial services is to be encouraged.
- Furthering responsible business conduct is important, eg. ensuring that remuneration practices and conflicts are not detracting from proper disclosure.
- Remuneration/ conflicts of interests should be disclosed where conflicts cannot be avoided.
- Disclosure should help consumers distinguish between what is essential and what's less important.

AIST believes that the application of these principles to the outcomes of RG97 raise questions such as:

- Why isn't there a level playing field across, for example, non-platform superannuation and platforms, superannuation and managed investment schemes, and asset classes (unlisted and listed property)?
- Why isn't there clarity and standardization as to what is a 'fee' or what is a 'cost'?
- Why haven't the outcomes been consumer-tested?

### **Members cannot compare fees and costs of different products**

To be effective, the regime should enable members to compare fees and costs for all superannuation products – a MySuper product with another MySuper product; a MySuper product with a choice product or investment option; and a choice product or investment option with another choice product or investment option.

Members cannot easily compare the fees and costs of a MySuper product with a choice product investment option, or compare the fees and costs of two different choice products or investment options.

---

<sup>1</sup> Organisation for Economic Co-Operation and Development, (2011), *G20 High-Level Principles on Financial Consumer Protection*, Geneva: Organisation for Economic Co-operation and Development. (Endorsed by G20 Finance Ministers & Central Bank Governors 14-15 Oct 2011) Available at: <http://www.oecd.org/daf/fin/financial-markets/48892010.pdf>

There are multiple reasons for this, including:

1. The Government's repeated deferral of the introduction of product dashboards for choice products.
2. It is widely recognized that the fees and costs template is not consumer-friendly.
3. ASIC's decision to exempt platforms from the definition of interposed vehicle.
4. More broadly, the legislative framework does not require funds that offer members the ability to invest in multiple investments to produce aggregate fees and costs information.

For example, the key problem with platform disclosure is that investors on a platform only get the wrap administration fee from the platform brochure and then they have to work out what the underlying fees and costs are based in the PDS for each individual investment managed investment option. There is no single source of information which tells a wrap investor what their total fees and costs are, and this is why you can't compare it to an industry fund which included comprehensive information in a single PDS for each investment option.

5. The approach taken in ASIC Regulatory Guide 97 *Disclosing fees and costs in PDSs and periodic statements*.

It is imperative that the expert review provides clear, concise recommendations for reform that have been exposed to a thorough industry consultation process. Given the significant issues at stake, we remained concerned about the capacity to effectively review this regime and resolve these problems to ensure sound consumer outcomes are achieved in a timely manner.

We do recognize, however, that some reforms would need regulatory reform (but could still form part of the Expert Review recommendations). In particular:

- Implementation of the choice product dashboard regime would require changes to the Corporations Act.
- Overhauling the fee template would require changes to the Corporations Regulations.
- Requiring funds to produce aggregate fees and costs information would require law reform.

In AIST's view, the Expert Review should identify issues which cannot be resolved through the Expert Review process, and make recommendations for a pathway for these issues to be resolved. In the short term, this should include recommending implementation of the product dashboard regime for choice products as soon as practical. Longer term, it should also include recommending a comprehensive, independent, consumer-centric review of member disclosure in superannuation.

### **Expert review process**

We recommend the Expert Review process includes the following:

- Consumer testing to ascertain whether members understand fees and costs disclosure and can use it to compare products.
- Transparency about the scope of the review, including:

- Release the Terms of Reference.
  - Release the stages of the Review, what they are, and how and when they will be undertaken.
  - When there will be a release of the issues which will be the key focus.
- Transparency about the issues raised and a specific response to each issue explaining the reasons for the approach taken.
- Transparency about the extent and nature of stakeholder consultation.
- Transparency as to who will be consulted at each stage of the Review and how that consultation will occur, including the taking of submissions, public roundtables, and inclusion on ASIC's website about these consultations.

## Questions posed by Expert Review

Are there any key areas where you have concerns/issues with the policy direction adopted/explained in RG 97? Are there areas where the current requirements might in your opinion lead to business decisions or practices that are contrary to the long-term interests of members?

### Objectives and principles were not stated

The legislation which introduced the superannuation fees and costs disclosure regime does not articulate the objective of the regime. ASIC did not articulate the objective of superannuation fees and costs disclosure, or overarching principles that underpin the disclosure regime, as part of its review.

We acknowledge that ASIC's reluctance to set out objectives or principles may in part be attributable to the absence of guidance in the relevant legislation or supporting materials. AIST recommends that the Expert Review articulate the objectives of the regime and overarching principles that underpin it.

### Uncertain relationship with APRA system-level data

Superannuation funds are required to report product-level fees and costs data to APRA. This data is based on the fees and costs information in Product Disclosure Statements. APRA publicly reports on the data in its regular statistical collection. There is thus a direct relationship between member-facing fees and costs disclosure subject of ASIC's review and APRA's statistical collection.

Although ASIC's own submission to the current Productivity Commission review of competitiveness and efficiency of the superannuation system acknowledged problems with the comparability of APRA's data collection, the regulator has not acknowledged that the problems that plague member disclosure are replicated in APRA's data collection. These problems undermine the capacity of the prudential regulator and others that rely on its statistical collection such as independent commentators and academics to understand and assess the relationship between fees and costs and performance on the system as a whole, or compare fees and costs across different sectors, or products.

AIST recommends that the Expert Review identify the relationship between the superannuation fees and costs disclosure regime and APRA's data collection.

## **Platforms**

For some inexplicable reason, platforms have been exempted from the RG97 disclosure regime. This is despite the fact that the majority of members of retail superannuation funds hold their super via a platform. However, members cannot readily understand the fees and costs of platforms, and the responsible entities for these platforms are held to a different standard of disclosure to the rest of the superannuation industry.

Evidence from other, comparable jurisdictions indicates that the use of platforms can have a significant impact on the total cost of investing. The United Kingdom Financial Conduct Authority found in 2016 that platform costs varied, depending on balance, from between 20 basis points to over 90 basis points. It found that for investors using passive funds, platforms can contribute a large share of overall cost of investing than fees and costs for the fund itself. AIST recommends that the fees and costs regime should include disclosure of all fees and costs for platforms.

## **Inconsistent requirements for superannuation and MIS**

There are different fees and costs disclosure regimes for superannuation and managed investment schemes. This creates an additional compliance burden for the industry and is difficult to justify from a consumer perspective. The objectives of enabling members to understand and compare fees and costs apply equally to investors outside of superannuation. AIST recommends the fees and costs disclosure regimes for superannuation and managed investments should be aligned.

The short history of the fee and cost disclosure regime set out in Annexure A provides a brief insight as to how the non-alignment of superannuation and managed investment scheme fee and cost disclosure happened. AIST notes that there have been no reasons as to the removal of the alignment. Clearly, the current regime which continues the non-alignment does not meet the stated underlying objective.

## **Property**

There are significant problems with ASIC's approach to fees and costs disclosure for property. First, property as an asset class is treated differently to other asset classes. Second, listed property is treated differently to unlisted property. Third, there is no certainty or logical basis for including property operating costs (for example, inclusion of property management costs that can be met by the tenants of that property).

AIST recommends property should not be treated differently to other asset classes. There should be no difference in the treatment of listed and unlisted property. There should be no difference between the treatment of property and infrastructure as asset classes. We have the concern that members may actively select against a fund that invests in direct property due to an incorrect perception that these costs are extremely high when compared with other funds with differing investment arrangements.

Superannuation funds should not be required to include property operating costs in fees and costs disclosure, and should be permitted to amortise the cost of stamp duty for new acquisitions over the expected lifetime of the asset.

Are there areas where the position set out in RG 97 creates material implementation problems? If so, what are the key outstanding areas of concerns (noting that we have already discussed implementation issues with the RG 97 Industry Working Group and are aware of their concerns?)

Page | 7

AIST's view is that the Expert Review should focus on resolving the significant outstanding policy issues with the fees and costs disclosure regime.

ASIC's approach of the superannuation fees and costs disclosure regime created significant implementation issues for AIST member funds. These included a failure to appreciate the substantial cost of implementing ASIC's revised requirements or conduct a cost-benefit assessment; lack of transparency with different stakeholders receiving inconsistent messages; shifting goal posts, including repeated deferrals and the introduction of additional disclosure obligations very late in the transition period.

AIST recommends that once the outstanding policy issues are resolved by the Expert Review, the final requirements are communicated to all industry participants at the same time and the industry is given sufficient time to implement the requirements, taking account of the typical timeframes for producing disclosure documents.

### **Legislative onus of collecting and reporting data**

AIST highlights that the regime has placed the onus of collecting and reporting data on the entities issuing information to members. We believe that this onus has been misplaced: while superannuation funds and other entities may use their negotiating clout and contracts in order to gain the information, the onus should also be placed on the entities which have the data in the first place. To support our advocacy, AIST notes that the UK has placed the onus on investment managers.

Is there appetite for further change – or are sunk implementation costs so high that most would rather just proceed with the current position even if they might disagree with it? Cost benefits – what, if any, elements are disproportionately expensive/problematic to implement?

AIST strongly supports further change to address the significant outstanding policy issues set out in this submission.

Any views regarding comprehensibility of the fee and cost disclosure requirements under Part 7.9 of the Corporations Act and RG 97? Are there any particular areas where RG 97 and relevant instruments could be amended to improve clarity and ease of implementation?

ASIC's review did not involve consumer testing to ascertain whether members understand fees and costs disclosure or use the information they are given to choose products with strong long-term net returns.

Evidence suggests that this is not the case. Research conducted by Rice Warner for Industry Super Australia dated September 2017 found:

- Retail funds have been the largest beneficiary of rollover activity.
- Many members are charged a higher fee after switching. 49% of members pay higher fees after switching funds, and 31% of members did not have a notable increase or decrease in fees paid (with a margin of \$10 either way). 20% of members pay lower fees after switching funds.
- The aggregate fee outcomes from switching activity realised a net increase of \$137 million in fees. The major component of this is a \$170 million increase in fees as a result of switching into funds with higher fees. Retail funds account for 92% of this increase in fees.
- The aggregate estimated impact on investment returns reveals a net decrease of \$284 million annually. This is largely driven by a \$373 million decrease in returns annually for members rolling into funds with lower returns. Retail funds accounted for 87% of this decrease in returns. This is offset by an \$89 million increase in annual returns for those members switching into higher performing funds, while only 33% is by for-profit funds and. 52% by industry funds.

AIST recommends that the Expert Review undertake consumer testing to better understand whether members understand fees and costs disclosure or use the information they are given to choose products with strong long-term net returns.

It is also difficult for practitioners to understand the requirements of the regime, which are fragmented across legislation, regulations, legislative instruments, 70 pages of ASIC Regulatory Guidance, and 80 pages of industry guidance. AIST recommends the requirements should be simplified and consolidated to improve user understanding and comprehension.

What is your view about the extent to which the current regime facilitates consumer comparison between products? What, if any, are the key obstacles?

The current regime facilitates comparison of different MySuper products. This is valuable but does not go far enough given the relative homogeneity of MySuper products and the fact that most switching activity is actually from MySuper products to choice products.

The regime does not enable comparison of MySuper products with choice products or between two choice products.

In December 2017 AIST, together with ASFA and the FSC lodged with ASIC a joint application for facilitative compliance in relation to fee and cost disclosure on behalf of advisers. The application states:

- Information in Statements of Advice about the fees and costs of different products may not be disclosed on a like-for-like basis, particularly when comparing platform and non-platform superannuation products.
- Product issuers have taken different approaches to the breakdown of fees and costs in the fee template, as well as the costs that must be disclosed in the additional explanation of fees and costs section. This also makes it difficult for members and/or advisers to compare products.

The relief application demonstrates that even professional financial advisers cannot compare fees and costs for platform and non-platform products. This is a fundamental failing of the regime which must be addressed. We note that ASIC has not formally extended its facilitative compliance approach. However, ASIC has noted that where it is not possible to compare fees, this should be stated within the SOA. AIST repeats its concerns that members are not placed in a position where they can compare fees.

Are there any particular points about RG 97 implementation that raise tensions between member groups ie industry funds and retail funds?
--

It is widely recognized that industry funds typically invest in a greater proportion of unlisted property assets compared with retail funds and that most members of retail funds hold their superannuation via a platform. The different fees and costs disclosure requirements for listed v unlisted property and platforms mean current fees and costs disclosure regime creates an unlevel playing field under which industry funds often appear to be more expensive than retail funds when this is often not the case.

## **Summary of recommendations**

### **Review process**

1. Undertake consumer testing to gauge whether members understand fees and costs disclosure and can use it to compare products.
2. The Review should identify issues which cannot be resolved through the Expert Review process, and make recommendations for a pathway for these issues to be resolved.
3. Be transparent about the review process and outcomes.

### **Policy**

AIST recommends that the Expert Review should:

1. Clearly articulate implementable objectives of the regime and overarching principles that underpin it. AIST repeats that ASIC has publicly stated that the objective is to improve the transparency and comparability of fees and costs for superannuation funds and managed

investment schemes. While the more granular objectives have not been stated, AIST strongly advocates that RG97 has not met this publicly stated objective but – in many cases – actively works against achieving it.

2. Recommend that the Government implement the choice product dashboard regime.
3. Recommend an independent review of the fee template.
4. Require funds to produce aggregate disclosure of fees and costs.
5. Recognise the relationship between fees and costs data provided to members and to APRA.
6. Require full disclosure of all fees and costs for superannuation held via platforms.
7. Recommend alignment of the regimes for superannuation and managed investments.
8. Align the requirements for property and other asset classes.
9. Align the requirements for listed and unlisted property.
10. Do not require funds to include property operating costs.  
We note that our recommendations 8, 9 and 10 are a 'package' of recommendations. Recommendations 8 and 9 are dependent on the acceptance of recommendation 10.
11. Permit stamp duty on property acquisition to be amortised over the expected lifetime of the asset.
12. Review the onus of collecting and reporting data so that there is some ownership taken by those who hold the data in the first place.

## Conclusions

AIST strongly supports the Review. We have strongly advocated an objectives and principles-based approach, as opposed to a sector-orientated approach. Applying principles does then raise the questions we set out earlier in this submission:

- Why isn't there a level playing field across, for example, non-platform superannuation and platforms, superannuation and managed investment schemes, and asset classes (unlisted and listed property).
- Why isn't there clarity and standardization as to what is a 'fee' or what is a 'cost'.
- Why have consumers been placed in a situation where they cannot compare products.
- Why haven't the outcomes been consumer-tested.

We look forward to ongoing dialogue with yourself and ASIC regarding these matters. AIST will revert with an analysis about the implementation aspects of our recommendations.

For further information regarding our submission, please contact Ailsa Goodwin, Head of Advocacy on 0386773831 or at [agoodwin@aist.asn.au](mailto:agoodwin@aist.asn.au)

Yours sincerely,



Eva Scheerlinck  
**Chief Executive Officer**

*The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.*

*As the principal advocate and peak representative body for the \$700 billion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.*

*AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.*

## Appendix A A short history of fee and cost disclosure

- PDS issue requirements were introduced In 2002. Section 1013(1)(d) of the Corporations Act meant that PDSs of both superannuation products and of registered managed investment schemes had to disclose costs of the product. However, there wasn't any guidance regarding how this information was to be disclosed.
- 2005 saw the introduction of the 'enhanced fee disclosure regime', which was designed to improve this – Corporations Amendment Regulations 2005 (No.1) (Cth) (2005 Regulations).
- The following statement was included In the Explanatory Statement relating to the 2005 Regulations, and said that the disclosure regime was designed to:

*'...establish a uniform disclosure regime for financial services providers, including in relation to superannuation and managed investment products. Under Part 7.9, financial service providers must provide retail clients with a Product Disclosure Statement (PDS), before the consumer purchases the financial product. The PDS is designed to inform the consumer about important features of the product, including costs, and can be used to aide the consumer in making decisions as to whether to purchase the product or not.*

*Part 7.9 also contains on-going requirements in relation to superannuation and managed investment products, such as through periodic statements.*

- AIST understands that the 2005 Regulations introduced a common fees and cost disclosure regime aligned for both superannuation and managed investment schemes.
- The alignment of superannuation and managed investment scheme fee and cost disclosure was removed through the *Superannuation Legislation Amendment (MySuper Measures) Regulation 2013* (Cth) – the 2013 Regulations. This was part of the Stronger Super reforms.
- The 2013 Regulations meant that superannuation funds had to calculate and disclose four new concepts:
  - Indirect costs.
  - Investment fee
  - Administration fee
  - Indirect cost ratio.

As a consequence, superannuation funds were required to replace the previous fee table in PDSs with a new table which included the outputs of these four new concepts.

- Subsequently, ASIC examined fee and cost disclosure and issued ASIC Report 398 *Fee and cost disclosure: superannuation and managed products*. Flowing from this report, ASIC published Class Order 14/1252 and subsequently Regulatory Guide 97.

\*\*\*

