Superannuation Legislation Amendment (MySuper Measures) Regulation 2013

15 May 2013

AIST submission on Treasury consultation draft

AIST

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's $500 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

AIST is a registered training organisation and has recently expanded its education program to encompass the growing and changing needs of all members of the not-for-profit superannuation sector.

AIST offers a range of services including compliance and consulting services, events - both national and international - as well as member support. AIST also advocates on behalf of its members to relevant stakeholders.

AIST's services are designed to support members in their endeavour to improve the superannuation system and build a better retirement for all Australians.

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1 Executive summary

AIST is a supporter of the Stronger Super package of reforms, and has been a major contributor to the consultation process. This includes support for the key elements in MySuper product design that meet the criteria for simplicity, transparency and comparability.

These criteria are in turn supported by an appropriate disclosure regime, of which the product dashboard requirements, portfolio holdings disclosure, and remuneration and systemic transparency are important elements.

AIST supports each of these elements and recognises that many of the details have been the subject of extensive discussion between the government and the superannuation industry.

However, in this submission AIST makes a range of comments to clarify the purpose and meaning of the regulations, or to suggest a more practical course.

AIST makes the following recommendations:

- The reporting of a super fund's annualised return target should align with the fund's annual reporting date.
- The expression "geometric rate of return" be replaced by reference to geometric mean rate of return.
- The dashboard should initially disclose returns to 30 June 2012, with the return then updated within 14 days of the Board setting its annual rate.
- The term 'estimated return' should be further clarified to include a link to the expected probability of achieving that outcome.
- The "level of investment risk" in its current form should be renamed as a "level of investment volatility."
- The measure of investment risk should be supplemented by a measure of long-term risk, in other words, a level of inflation risk as well as a level of volatility risk.
- The definitions of "final product", "investing product" and "property" are not clear, and should be clarified in the regulations
- The regulations should be expanded to provide clarity and certainty on a materiality threshold for portfolio holdings disclosure.
- The "fees and other costs" table is confusing and should be redrafted.
- It is not sensible to require funds to issue a new Product Disclosure Statement immediately and that it is more appropriate for it to be required after annual processes are finalised and fresh information on fees and returns can be applied.
- The disclosure of remuneration requirements are inconsistent with the disclosure requirements of listed companies should be aligned with the Corporations Regulations and apply to "key management personnel".

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- There should be a requirement for RSE licensees who do not pay their directors from the fund, to disclose an apportionment of salary from the related entity that accurately represents the time commitment devoted to the directors' superannuation board obligations.
- The regulations should apply for an RSE licensee's next reporting period post-1 July 2013 to allow funds sufficient time to compile, review, audit and present the information now required to be disclosed.
- A materiality threshold should be introduced into the outsourced service providers' provisions.
- The proposed relevant person provision is ambiguous and requires redrafting.
- The attendance records requirements should be aligned with section 300 of the Corporations Act and require disclosure of attendance at meetings in the year of reporting.
- The obligations to inform members with accrued default amounts may be confusing and involve unnecessary duplication.

The recommendations are further detailed and explained in the body of our submission.

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2 Comments

Overall, AIST supports the regulations and has a strong commitment to disclosure and transparency. We make the following comments to clarify their purpose or to suggest a more practical course.

We note that the regulations anticipate the passage of the final tranche of the MySuper legislation (the *Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Bill 2012*) ("the Bill") with the requirements to be further detailed in the Reporting Standard SRS700.0 determined by APRA (SRS700).

While AIST supports the arrangements being clarified as soon as possible, it also requires us to reserve our rights to make additional comment should the Bill be amended or the reporting standard impact in the comments we make below.

2.1 Items 1 and 3 – Product dashboard requirements

2.1.1 Net return target

Not all super funds have 30 June annual reporting dates, with around 32 RSE licensees having other reporting dates (e.g. 30 September and 31 March). Almost all of these alternate reporting dates align with the end of a quarter.

The reporting of the annualised return target should align with the fund's annual reporting date, as this in turn aligns with the fund's reporting of annual performance. This would ensure that a fund's net return target is disclosed on the same annual basis as their investment performance. This should be clarified by an amendment to the regulation or by SRS700.

The annual return target is required to include an administration fee, which may include a fixed dollar fee component, regardless of account balance. This will be based upon the representative model of a $50,000 account balance and $5,000 in annual contributions. This approximates the approach taken for mandated fee disclosure in PDSs. As this is a modelled outcome that may not reflect a member's actual experience, this needs to be made clear in the disclosure of return targets as well as actual performance.

AIST submits that the expression "geometric rate of return" be replaced by reference to **geometric mean rate of return**. The geometric mean is used to determine the average compound growth rate (or average rate of return) over a given period. The geometric mean is the most accurate method for determining average rates of return[1].

[1] campus.murraystate.edu (n.d.) *Geometric Mean Return*. [online] Available at: http://tinyurl.com/ba9l6eo [Accessed: 15 May 2013]

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AIST submits that the application of the legislative requirement to update information set out in the product dashboard within 14 days of change) paragraph 1017BA(1)(d)) should be clarified in the regulations. This is to ensure that it can be practically met by a diligent trustee.

In relation to annual investment performance (and the fees and other costs that are netted from the performance), the 14-day requirement can commence from the date on which the performance of the fund in the preceding year is set or approved by the fund.

Where a fund sets an annual crediting rate, investment returns and fees are the most significant factors. Typically, investment manager reports are received in the 2-3 weeks following the end of the reporting period. A process of review and consideration involving auditors and audit committee follows this. A board is then likely to set its annual rate – and hence have settled view on its net investment performance – between 6-10 weeks after the end of the reporting period. Audited financial statements however may take up to 13 weeks for the end of the reporting period.

For a fund that offers a MySuper product from 1 July 2013, it is unreasonable and impossible for them to be required to disclose annual investment performance return to 30 June 2013 by that date. An amendment to the regulation or SRS700 should clarify that the dashboard initially disclose returns to 30 June 2012, with the return then updated within 14 days of the Board setting its annual rate.

2.1.2 Net Return Target clarification

Section 7.9.07P of the exposure draft outlines the net target return to be provided in the product dashboard table. In particular, under item (3), funds are to calculate the estimated percentage of net return that exceeds the growth in CPI over 10 years starting from the nominated date (the 10 year estimate) in accordance with Reporting Standard SRS 700.0. Further, the Explanatory Memorandum states 'the return target for the product will be presented as a net return target which will be a per annum estimate of the expected return'.

Funds may have different interpretations of the definition of expected return and, as such, could diminish the principal objective of making the dashboards comparable across funds. It would be helpful if the term 'estimated return' is further clarified to include a link to the expected probability of achieving that outcome. Clearly, a strategy targeting to achieve CPI +5% 50% of the time will produce different outcomes for members to a strategy targeting to achieve CPI +5% 80% of the time .

Many not-for-profit funds have objectives against CPI that are targeted at a higher likelihood, for example, to deliver CPI +3.5% at least 75% of the time over rolling 10 year periods. A return that is expected to be achieved 50% of the time will have a higher return target (say, CPI +5%). These are both expected returns, and both use the same input data, however they have different probability parameters. For comparability across funds, which is one of the goals of the Stronger Super changes,

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especially in relation to MySuper, it may be useful to define 'expected' so that it is interpreted in a consistent way. A member may not understand that a fund targeting CPI +3.5%, 75% of the time may be offering the same return over time as another fund targeting CPI +5%, 50% of the time.

2.1.3 Measurement of investment risk

AIST notes that the explanatory memorandum states (on page 3) that the investment risk measure "will initially apply" the method proposed in the ASFA/FSC Standard Risk Measure Guidance Paper for Trustees. We submit that this comment be further elaborated by stating an intention to supplement the Standard Risk Measure with an additional measure of longer-term risk. This additional measure should include purchasing power risk, and so highlight the long-term risk of, for example, cash-based products.

The approach used in the Standard Risk Measure was developed by a joint working group established by ASFA and the FSC, with the specific stated aim of providing guidance on the labelling of investment options offered by superannuation funds to ensure better consistency across the industry. At the time, APRA provided guidance that trustees should clearly state the expected frequency of negative returns over a 20 year period for each investment option they offer.

It is widely agreed that there are numerous risks associated with superannuation, including a variety of investment, operational and financial risks. The risk of a negative one year return is only one investment risk members face. For example, another significant investment risk is the risk of not achieving a long term real return sufficient to allow the member to meet their retirement income needs.

AIST accepts that the Standard Risk Measure is valid in the context within which it was developed. However, we consider it misleading and not in a superannuation fund member's interests to use a name which suggests that it encapsulates an assessment of the wider portfolio of risks members face. As a result, we submit that the Government should rename this measure in the regulations as the "level of investment volatility."

It is important for the super industry to continue along the path the "Standard "Risk"[volatility] Measure" has initiated and develop an additional risk measures to help super funds communicate investment risks to their members. Importantly, additional measures need to take into account the risk-return trade off and the need for members to achieve real long term returns in order to meet their retirement objectives.

The explanatory memorandum also states "the level of investment risk is a measure of the number of negative returns that is expected out of every 20 years for the fund." However, the example of the

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product dashboard does not show a level or a measure of risk, just the number of expected negative years.

The row heading in the dashboard example, 'Level of investment risk', does not correspond with the content next to it. The content is not a level is it just an expected number of negative annual returns. This is the same as the current requirement.

If a standard risk measure is to be used, it should show a long-term as well as a short-term level of risk. (In other words, a level of inflation risk as well as a level of volatility risk).

The requirement to direct members to the product dashboard from 1 July 2013 requires references to both MySuper and Choice products even though a MySuper product may not be available until 1 January 2014 (if at all) and product dashboards for Choice options are not required until 1 July 2014. Will the requirements be satisfied by a statement of intent?

2.2 Item 1 and 2 - Portfolio holdings requirements

The requirement to provide the number of units and price of units may not be applicable in all cases (as is qualified in the proposed regulation 7.9.07X). For example, unlisted assets have valuations rather than prices. Fixed interest also uses different measures, such as a loan.

AIST submits that use of percentage values would be more meaningful and less commercially problematic than the use of dollar values. There are disadvantages and barriers to showing dollars instead of percentages:

- Showing the dollar value of holdings has the potential to compromise the commercial value of some holdings. For example, in the case of direct infrastructure and property holdings or single manager holdings there will be complete visibility of the value of the holding. (When the holding is through a trust or fund the value will not be as visible.). Refer to Appendix 1 to this paper for an example provided by AustralianSuper.
- Showing the dollar value is also difficult because when shown at option level it will have to be net of fees and tax, whereas the values of the individual holdings are collected as gross values. There should be a standard industry practice on how funds should show (or not show) the differences /option level values and the values of individual holdings. This is not clear in the regulations. In any case, custodians will need to develop their IT capability to meet that practice as there is no existing system capability for this and ideally the industry would have standard data formats for this.
- Percentages could be shown against the investment option, which is the most meaningful consumer disclosure, as well as against the asset class (i.e., two separate listings).

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There is a significant lack of clarity around the portfolio disclosure requirements, including the following matters:

- The definitions of "final product", "investing product" and "property" are not clear, and should be clarified in the regulations.
- How is it envisaged the asset classes will be divided in Tables 1 and 2? Under the draft regulations the tables would literally be hundreds of pages long.
- In the case of some managers, funds won't be able to show their portfolios without breaching contracts with them, which contain confidentiality clauses.
- What level of rounding is envisaged for the dollar value?
- Isn't there more information that should be disclosed? E.g. countries and sectors for equities and unlisted assets. Issuer, type and country for fixed income?
- It would be useful to have guidance on how funds should describe and list derivatives to avoid inconsistent approaches across the industry.

AIST notes that neither the legislation nor the regulations provide a materiality limit on the level of underlying holdings that are required to be shown when the fund is below a certain percentage of the portfolio or the overall option. ASIC, however, has the power to prescribe a materiality limit. As the existence or otherwise of a materiality threshold is a very important factor in the construction of portfolio disclosure arrangements, AIST calls on the Government to provide clarity and certainty in the regulations. For example, a materiality limit of 0.1% would significantly change the way in which super funds made arrangements for disclosure.

The explanatory memorandum says that, "In some cases a managed investment scheme may be the final financial product that is invested in for which the RSE licensee has information. For example, an RSE licensee may invest through a managed investment scheme offshore. In this case, this information (including the amount invested) should be disclosed as the final financial product invested in within the first table." What are the rules about this? What is the RSE licensee required to obtain information on? Do the regulations permit omission of underlying holdings if it doesn't have the information? What would qualify as "unavailable"?

New regulation 7.9.07X(6) contains no best endeavours (or similar) qualification on look through. Given the amount of work required to set up the reporting systems, and that investments in foreign jurisdictions are not obliged to comply with information requests, this is unreasonable.

2.3 Item 4 – Complaints

AIST strongly supports the ability of superannuation consumers to access reasons for decisions from trustees and supports the proposed provisions. However, the exposure draft has not dealt with the

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scenario where a trustee fails to make a decision. If no decision is made, then the complainant will not receive any notice from the trustee and therefore not receive notice of their rights.

AIST submits that this possibility needs to also be addressed in the regulations.

2.4 Items 7 and 14 – Fees and other costs tables

Item 7 of the exposure draft intends to insert a replacement Division 1 of part 2 of Schedule 10. This will replace the existing generic template for multiple fee structures, which applies for all products with a new template for 'Superannuation products' and applying the existing template to all 'Products other than superannuation products'. The new template for 'superannuation products' includes information with regard to new 'types of fees or costs' including:

- a separation of 'management costs' into sub categories of 'Investment Fees' and 'Administration Fees'; and
- Service Fees' comprising 'Investment switching fees', 'Exit Fees' and 'buy-sell spread'.

These fee categories replace existing fee categories relevant to disclosure for superannuation products. With the exception of the 'buy-sell spread' none of these new fee categories are defined in Schedule 10, the Corporations Regulations (regulation 1.0.02) or the Corporations Act (s9 or s761A), nor does the ED insert any such definitions. Are funds also expected to calculate the buy/sell spreads for underlying investments? Form 702 Item 1.5 seems to suggest this, but it would be extremely difficult to do.

Are funds also expected to include tax as part of fee disclosures? Typical amounts of tax paid are significantly higher than costs (or the old MER).The existing definitions in the SIS Act do not seem to be sufficient without a linking provision. AIST submits that there should be a linking provision in the new template to the definitions in sect 29V of the SIS Act.

The new 'fees and other costs' table for superannuation products is achieved by repealing section 201 of Schedule 10, and substituting it with a new section 201 that includes the new superannuation specific 'fees and costs' table. However, section 201 only applies to products with a multiple fee structure. AIST notes that the same change needs to be made to section 202 for products with a single fee structure.

Similar to item 7, Item 14 of the regulations proposes to introduce a new 'fees and other costs' table for superannuation products, but for shorter PDSs. This is proposed to be achieved by repealing section 8(3) of Schedule 10D, and substituting it with a new section 8(3) which includes the new superannuation specific 'fees and costs' table. However, the table provided in the Regulations appears

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to be an "Example of annual fees and costs for balanced investment option" table, not a "fees and other costs" table.

2.5 Item 13 – Product Disclosure Statements

Item 13 proposes a new Clause 3 of Schedule 10D. We note that although the start date of the PDS changes is 1 July 2013, the portfolio holdings disclosure (subject of the statement required under paragraph (1)(b)(i)) does not commence until 2014.

Clause 3 paragraph (2) appears to contain an error and would make more sense if the relevant date was the "later" (rather than the "earlier") of those in paragraphs (a) and (b). AIST suggests that it is not sensible to require funds to issue a new PDS immediately and that a more appropriate date – after annual processes will be finalised and fresh information on fees and returns – be applied.

Consideration should be given to a transition period, as the proposed regulations are only in draft form, creating unachievable deadlines to issue new PDSs with the proposed disclosures, including new terminology, by 1 July 2013. Given these issues will effect PDSs from 1 July 2013, clarification is obviously very time critical given the lead time required to prepare PDSs.

The existing fee table, for example, should be allowed for any PDS issued up to 1 January 2014, from which date the new fee table must be used. AIST suggests delaying the PDS disclosure requirements to 1 January 2014.

Although the fee template requirement in the PDS is removed, the requirement under the surrounding provisions to describe relevant fees and costs remains. It might be just as advantageous for presentation purposes for fund trustees to continue to present these in the form of the template. The final regulations will need to make further changes consequential upon the removal of the template requirement (e.g., subclause 8(4) that refers to the template in 8(3)).

The Corporations Regulations prescribe that PDSs and shorter PDSs must set out fees charged in a table format. AIST supports the policy behind the fee tables and the of use of standardised language for ease of comparison. We are concerned, however, that members may find the mandated use of the term "exit fee" confusing. The expression "exit fee" has an associated meaning, typically, a penalty for withdrawing. We are concerned that this has the potential to confuse. While it will be possible to clarify that an "exit fee" is the same thing as what many funds call a "withdrawal fee", it will take some time to "transition" to the new terminology.

The existing Schedule 10 has not been repealed; thus, the requirement in 8(7) in Schedule 10D to include a worked example consistent with Divisions 5 & 6 will continue. This might lead to an

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obligation to include both the new and the existing worked examples that will include different fee categories for the same MySuper product

Limited space to disclose in shorter PDS: Eight pages is already incredibly tight. We suggest some leeway is required or consideration to allowing more disclosure by incorporation by reference

2.6 Item 24 – Remuneration and systemic transparency

2.6.1 Remuneration

AIST supports disclosure of remuneration of directors and key executive personnel[2]:

> *"Superannuation funds should disclose the remuneration arrangements of their key executive officers. This should include information on how the remuneration is generated (e.g. base salary, bonuses and incentives) and how much each component is. This information should be disclosed on the fund's website and/or its annual report. A fund's policies for remuneration of executives should also be disclosed, including its relationship to the fund's performance.*
>
> *"Remuneration of directors should also be disclosed to members. Each individual director's remuneration should be disclosed and should include information on how the remuneration is generated (e.g. meeting attendance, chairing responsibilities, committee responsibilities, apportionment of salaries from a parent company), how much each component is, and who it is paid to (e.g. whether payments are made to a nominating organisation). Any remuneration received by a director for being a fund representative on another board should also be disclosed. Remuneration information should be disclosed on the fund's website and/or its annual report. "*

We note that the exposure draft of the regulations has largely copied the remuneration disclosure requirements in the Corporations Regulations, with a couple of exceptions. We support the principle that the disclosure requirements should be in alignment; however we have identified some concerns.

2.6.1.1 Executive officer

The exposure draft refers to the disclosure of compensation granted to executive officers. The term executive officer is defined in section 10(1) Superannuation Industry (Supervision) Act 1993: "In relation to a body corporate, means a person, by whatever name called and whether or not a director of the body, who is concerned, or takes part, in the management of the body."

[2] AIST & IFF (2012) *A Fund Governance Framework for Not-for-Profit Superannuation Funds*. [e-book] Melbourne: Australian Institute of Superannuation Trustees, Industry Funds Forum. p.21. Available through: www.aist.asn.au http://tinyurl.com/cobwkcg [Accessed: 14 May 2013]

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The Corporations Regulations however requires the disclosure of remuneration for 'key management personnel'. This is defined in the accounting standards as "persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity."

AIST submits that the exposure draft requirements therefore are inconsistent with the disclosure requirements of listed companies, and in fact, are much broader. Paragraph 2.37(2) of the exposure draft refers to definitions in relevant accounting standards. AIST recommends that the provision be brought into alignment with the Corporations Regulations and that the disclosure requirements be restricted to key management personnel.

2.6.1.2 Post-employment benefits

Item 6 in paragraph 2.37 (1) requires the disclosure of post-employment benefits. It is unclear whether this refers to benefits paid in the reporting year, or agreed or potential post-employment benefits. AIST recommends that the intention be clarified.

Item 7 in paragraph 2.37 (1) refers to items 6 and 7. We suspect this is in error and should read items 5 and 6.

2.6.1.3 Compensation

Items 11 and 12 in paragraph 2.37 (1) refer to a 'compensation benefit made to a person' and 'contract for services between a person and the RSE'. The use of the word 'person' has an unclear meaning in those provisions and it is uncertain as to whether the disclosure requirements are intended to extend beyond those employed by the RSE licensee. Greater clarity is recommended.

Payments not to the director or not from the RSE licensee

AIST supports transparency in reporting of remuneration and supports item 16 in paragraph 2.37 (1). AIST has recommended that its members disclose where directors' fees are being paid to as stated in paragraph 18.2 of its Fund governance Framework. However, we also recommend disclosure of fees where they are not paid from the RSE licensee.

The Explanatory Memorandum states (p.9):

> *RSE licensees will need to disclose all payments, benefits and compensation paid for or provided by the RSE licensee or by related body corporates of the RSE licensee*.

So while there appears to be an intention to include disclosure requirements where a director is not paid from the RSE licensee but rather a related body corporate, it is missing from the regulations. AIST supports transparency and an equal playing field for all APRA regulated superannuation funds.

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Accordingly, we submit that the regulations should include a requirement for RSE licensees who do not pay their directors from the fund, to disclose an apportionment of salary from the related entity that accurately represents the time commitment devoted to the directors' superannuation board obligations.

2.6.1.4 Up-to-date

Section 29QB Superannuation Industry (Supervision) Act 1993, to which draft regulation 2.37 applies, requires disclosed information to be 'up-to-date'. With regard to the proposed remuneration disclosure provisions, AIST recommends that clarification be provided on what would be considered 'up-to-date'. The payments, benefits and compensation items listed are extensive and guidance on the currency of information would be beneficial in guiding the industry. If a bonus is paid at the start of the reporting period, for example, does it need to be disclosed immediately, at the end of the reporting period, or at some other time in order to satisfy the up-to-date criterion?

2.6.1.5 Commencement

The proposed regulations are unclear on the expectation regarding the first remuneration reporting required by RSE licensees. The proposed 1 July 2013 date does not specify if that will require funds to disclose for the previous financial year or for the next reporting period, or some other date.

AIST has encouraged its members to improve their remuneration reporting for key executives and directors and we have seen an improvement in this area over the past three financial years. We submit however, that the proposed regulations should apply for an RSE licensee's next reporting period post-1 July 2013 to allow funds sufficient time to compile, review, audit and present the information now required to be disclosed.

2.6.2 Systemic disclosures

AIST supports greater disclosure of information about by super funds and their governance.

2.6.2.1 Outsourced service providers

Paragraph 2.38(2)(j) requires disclosure of the name and Australian Business Number of each outsourced service provider. Much of the superannuation industry operates with an outsourcing model, however AIST submits that a materiality threshold be introduced into this provision. If a fund was required to disclose the details of each outsourced service provider, without such a threshold, the requirement would be too onerous while serving no value to the consumer. Every outsourced service provider would involve the office cleaning company, Australia Post, the courier company, just to name a few.

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2.6.2.2 Relevant persons

Paragraph 2.38(2)(k) refers to 'relevant person' in a manner that makes the provision uncertain. The term 'relevant person' is defined in section 10(1) Superannuation Industry (Supervision) Act 1993, and includes the fund's auditor, custodian and investment manager. However paragraph (k) suggests relevant person means 'each director, trustee, or person involved in the entity's trusteeship'. The phrase in the proposed provision is ambiguous in itself with the words 'person' and 'involved in' having insufficient clarity. AIST submits that the proposed provision requires redrafting.

Also in paragraph (k), the first two sub-paragraphs are number the same. This should be amended.

2.6.2.3 Attendance records

With regard to the proposed requirement to disclose ten years' worth of director attendance (2.38 (1)(l) of the exposure draft), AIST disputes the need for this depth of information to be disclosed. AIST supports the disclosure of directors' attendance at board and committee meetings (Paragraph 21, A Fund Governance framework for Not-for-Profit Superannuation Funds, AIST, 2012, p. 25).

Listed companies are only required to disclose attendance at meeting for the year of reporting: section 300(10)(b) Corporations Act.

The Corporations Act requirements are set out as follows (at section 300):

(10) The report for a public company that is not a wholly-owned subsidiary of another company must also include details of:

- *(a) each director's qualifications, experience and special responsibilities; and*
- *(b) the number of meetings of the board of directors held during the year and each director's attendance at those meetings; and*
- *(c) the number of meetings of each board committee held during the year and each director's attendance at those meetings; and*
- *(d) the qualifications and experience of each person who is a company secretary of the company as at the end of the year.*

If the intention is to align disclosure requirements with those for listed companies, then we submit that the regulations more closely mirror section 300 of the Corporations Act. RSE licensees should of course be required to keep records of director attendance and supply it to the regulators, if required, however, we dispute the efficacy of disclosing ten years' worth of attendance records on a super fund's website.

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2.6.2.4 Up-to-date

Section 29QB Superannuation Industry (Supervision) Act 1993, to which draft regulation 2.38 applies, requires disclosed information to be 'up-to-date'. AIST's members would benefit from greater clarity on what would be considered up-to-date for each of the elements in the proposed provision.

2.7 Item 51

- **Obligation to inform members with accrued default amounts**

Under proposed regulation 9.46A, a RSE Licensee has to inform members who have an accrued default amount of the process by which they will transition to a MySuper product.

This information must be given with the first periodic statement issued after the RSE Licensee identifies an accrued default amount. Where an RSE Licensee's timetable provides for the transition to occur within a medium to long-term timeframe, e.g. after 30 June 2014, this disclosure requirement makes sense.

However, an RSE Licensee may intend to transfer an accrued default amount to a MySuper product during 2013-14 and to give at least 90 days' notice in advance under SIS Regulation 9.46. In that case, there is potential for the notices under SIS Regulations 9.46 and 9.46A to confuse members as they are likely to be issued at around the same time. If a member receives a Regulation 9.46 notice, that will give the member enough information to clearly understand what's happening to their accrued default amount, making the separate Regulation 9.46 disclosure redundant.

Another concern about SIS Regulation 9.46A is its possible impact on the issuing of statements for periods ending 30 June 2013. Most funds will already have finalised their timetable for preparing and sending these statements, and the addition of a new requirement at such a late stage may cause considerable delays in getting statements out to members.

- **Limitation imposed by governing rules**

AIST supports the proposals in paragraphs 29TC(1)(f) and 29TC(3)(a) for the governing rules of a superannuation fund to be permitted to place limitations on the source or kind of contributions to a MySuper product.

However, we question the use of the concept of "foreign super fund" from tax law. What happens when something isn't a foreign super fund (eg IRA from USA). Accordingly, we suggest using terminology "transfers from foreign superannuation funds and/or similar foreign funds".

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3 Appendix 1: AustralianSuper example

Unlisted Property and Infrastructure Issues with APRA Subdivision 2E.2 – Obligation to make information relating investment of assets publically available

Background

AustralianSuper is a significant investor in unlisted property and infrastructure, with $4.8bn and $5.5bn of investments in the two asset classes respectively as at April 2013. Historically AustralianSuper has invested in these asset classes indirectly through pooled investment vehicles, with 92% of infrastructure assets and 98% of property assets by value currently invested in pooled funds. Both portfolios are currently undergoing a transition in terms of how we invest with the strategy going forward to invest new capital directly into unlisted assets (i.e. outside of pooled funds). This is expected to deliver improved investment outcomes for members through the greater portfolio control, liquidity and reduced investment management costs associated with a direct investment model.

While we are supportive of the objective to provide greater transparency to superannuation fund members, we are concerned that the proposed format of disclosure detailed in Subdivision 2E.2 has the potential to commercially disadvantage AustralianSuper members in our direct investment activities in unlisted markets. Furthermore, we have concerns that the proposed format may ultimately be difficult for members and other stakeholders to interpret, and not be supported by our external fund managers under existing arrangements, which would undermine the objectives of the disclosure requirements.

1. **Potential to commercially disadvantage the trustee in investing direct unlisted property and infrastructure investments through required disclosure for unlisted asset values to the detriment of member interests.**

The proposed disclosure requirements as detailed in 7.90.07X of the Exposure Draft require the disclosure of the dollar value invested in each Final Product or property attributable to MySuper product or choice product investment option. The implication of this requirement is that the carrying value of our unlisted assets will be publicly available, which has the potential to disadvantage AustralianSuper in the potential sale or acquisition of unlisted property and infrastructure assets under these disclosure requirements.

Global property and infrastructure markets are highly competitive with increasing demand for a scarce pool of high quality assets from institutional investors. Based on our research, the majority of our offshore competitors currently do not disclose publicly their carrying value for unlisted assets. To the

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extent that it is a legislated requirement for Australian superannuation funds to disclose the value of their underlying assets, we therefore believe this puts us at a competitive disadvantage in the market place.

Provided below are some specific examples of where we believe we would be disadvantaged:

- *Sale of Direct Investments:* AustralianSuper recently acquired a 20% direct interest in the 99 Year Lease of Port Botany and Port Kembla from the NSW State Government. In the future if we were to determine that it was in the best interest of members to sell our interest in this asset, the current carrying value for AustralianSuper would be available to potential purchasers in their evaluation of the investment. We believe that it is likely that purchasers would use the knowledge of our carrying value to frame their expectations of an acceptable sale price for AustralianSuper. In turn, this would undermine our negotiations with these purchasers and our ability to extract the best price for our members in a sale process.
- *Acquisition of Direct Unlisted Assets through Pre-emptive Processes:* Many large infrastructure and property assets are too large for one investor and are therefore jointly owned by a group of shareholders or a joint venture partners. It is common in the shareholder or joint venture agreements which govern ownership, that each investor is afforded a pre-emptive right over their co-investors' interests if they elect to sell. These pre-emptive rights are valuable to investors in that they provide an opportunity to increase their exposure to an asset and protect existing governance arrangements that may be caused through a change in ownership. AustralianSuper is presently subject to these arrangements on a number of existing direct infrastructure assets. If AustralianSuper's carrying value for such assets is made publicly available, this will influence the price specified by co-investors for the purpose of the pre-emptive process. This has the potential to adversely impact our members through either increasing the price paid for pre-emptive acquisitions or depriving us of the opportunity to increase our stake in these assets.
- *Participation in Investment Opportunities:* In order to access unlisted investment opportunities, AustralianSuper considers its relationships with potential co-investors and investment partners to be of critical importance. Where AustralianSuper seeks to invest in opportunities alongside investors who are not subject to the same disclosure requirements, it is likely that they will consider the requirement that AustralianSuper publicly disclose their carrying value also a potential commercial disadvantage to them. Unlisted valuations across co-investors are reliant on the same inputs and forecasts from companies' or properties' management and as such the disclosure of one co-investors carrying value may also be used to infer information about the likely carrying value of other owners. As such, these disclosure requirements may negatively affect the propensity for other institutions to partner with AustralianSuper for unlisted investments going forward.

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2. **Ability to meet required disclosure standards for unlisted investments through pooled investment vehicles in a form that is useful to members.**

As discussed, AustralianSuper's existing unlisted portfolios are currently invested predominantly through pooled investment vehicles managed by external fund managers. In our dialogue with fund managers on the potential disclosure requirements over the last 12 months, they have expressed similar concerns around the potential commercial disadvantage that may be caused to them if their investors disclose detailed of their underlying portfolios. Two areas have been highlighted to us as principle areas of concern:

- The disclosure of dollar values of assets which would allow market participants to establish the carrying value for their assets. This would impact these Managers in the same manner it would affect AustralianSuper as outlined in point 1 above.
- Identifying underlying assets as investments of a particular manager or portfolio, which would allow market participants to work out the composition of that portfolio.

If we are interpreting the requirements correctly, many of our pooled investment funds would be considered "first investing products," for the purposes of the required disclosure in Table 2. As such, the requirement that all investing products under Table 2 are to set "out the information about the second investing product and all subsequent financial investments under the information about the first investing product," will provide information necessary to establish the carrying values and compositions for their portfolios.

We therefore believe that where the requirement for disclosure does not extend to these managers (ie they are offshore), or is grandfathered in (ie do not apply to existing investment management agreements) it is likely that fund managers will refuse requests from AustralianSuper and other superannuation funds to be able to disclose details of the underlying assets held within their portfolios. AustralianSuper would therefore be restricted to providing information on the details of the fund or "first investing product," and would be unable to provide details of the underlying assets that comprise the bulk of its existing portfolio. We believe this would significantly undermine the usefulness of the disclosure for members of our fund.

3. **The disclosure format may not be useful to members.**

As there is relatively limited publicly available information for unlisted assets we have concerns that the proposed format may not prove useful to members:

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- *Name of investment:* Unlike listed assets which are readily identifiable by name or stock ticker, in many cases unlisted assets are not readily identifiable by their corporate name. As such we believe it would be useful to provide further descriptors of assets/investments (for example geographical location, type of asset or investment sector) to assist stakeholders to identify unlisted investments, their attributes and the composition of the portfolio.
- *Units/Shares Held:* While the proposed disclosure of units or shares held and their price is clearly useful for listed markets where details of the company are publically available (ie total number of shares on issue, current and historical share price), this has limited value for unlisted assets because a lack of reference information makes these values difficult to interpret. For example, disclosing that we hold 1,000,000 shares in Unlisted Asset X at $10 a share is not meaningful to investors because they have no reference to interpret this information.

Potential Alternative Forms of Disclosure for Unlisted Assets

In 2012 AustralianSuper developed its own proposed format of disclosure for unlisted assets which was circulated to each of our fund managers for consultation. Key features of this format included:

- Disclosure of final investment product/asset only, with no attribution of a particular asset to any external fund manager.
- Four data fields in table format for each final investment product (name, sector, geographical location, and % to 2 decimal places of the overall asset portfolio)

We believe this format provides useful information to members about the composition of the portfolio, its exposure to particular assets, markets and sectors. It was also well received by our external fund managers, with over 99% of unlisted fund managers by value across both infrastructure and property portfolios consenting to disclosure in this form. We would be pleased to recommend this format as a potential alternative format for disclosure of unlisted portfolios and discuss in further detail as required.

This material has been made available to AIST in the course of preparing this submission, and is available for review by Treasury if sought.

[end]

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