Law Council
OF AUSTRALIA

20 February 2026

Australian Securities and Investments Commission
GPO Box 9827
SYDNEY NSW 2000

By email: rri.consultation@asic.gov.au

To whom it may concern

Response to CS 39: Proposed amendments to stamp duty disclosure requirements

1. This submission has been prepared by the Superannuation Committee of the Legal Practice Section and the Financial Services Committee of the Business Law Section of the Law Council of Australia (the **Committees**). The Committees welcome the opportunity to make a submission to the Australian Securities and Investments Commission (**ASIC**) in relation to the proposed amendments to *ASIC Corporations (Disclosure of Fees and Costs) Instrument 2019/1070* (the **Instrument**) to require stamp duty to be disclosed as an average amount over seven years in the Fees and Costs Summary of Product Disclosure Statements for superannuation products and managed investment schemes set out in CS 39 (the **proposed amendments**).

2. The Committees commend ASIC for allowing sufficient time in the consultation process for CS 39 to afford a genuinely reasonable opportunity for proper consideration of the proposed amendments, having regard to the Christmas / New Year holiday period.

Alignment with APRA reporting

3. The proposed amendments are the outcome of a targeted review by ASIC of Regulatory Guide 97 Disclosing fees and costs in PDSs and periodic statements (**RG 97**). The stated purpose was that the review "may help boost investment in property by Australia's superannuation funds" by focussing on requirements to disclose stamp duty payments, to address concerns that "have been raised that the disclosure impacts performance test results and discourages investments in property by superannuation funds".[1]

4. The Committees welcome and support the regulatory purpose.

---

[1] ASIC, *ASIC to review superannuation investment requirements* (Media Release 25-164MR), 13 August 2025.

Telephone +61 2 6246 3788 • *Email* mail@lawcouncil.au
PO Box 5350, Braddon ACT 2612 • Level 1, MODE3, 24 Lonsdale Street, Braddon ACT 2612
Law Council of Australia Limited ABN 85 005 260 622
www.lawcouncil.au

5. However, the Committees do not support the proposed amendments on the basis that they are not appropriate to achieve that purpose, for the following reasons:

   - The proposed amendments change stamp duty disclosure in PDSs but do not change stamp duty disclosure in annual or exit statements (as there is no amendment to notional clause 104B of Schedule 10 of the *Corporations Regulations 2001* (Cth) which requires that, in periodic statements, fees and costs are determined over the period to which the periodic statement relates). As a result, we understand that stamp duty disclosure in annual and exit statements would still need to be calculated as the actual amount incurred during the reporting period, in addition to the separate calculations for PDSs on the proposed new basis.

   - The performance test is based on information reported to the Australian Prudential Regulation Authority (**APRA**) under the relevant APRA reporting standards. APRA Reporting Standard SRS 332.0 Expenses and Investment and Transaction Fees and Costs (**SRS 332.0**) requires superannuation funds to report fees and costs to APRA on the following basis:

     > *SRF 332.1 captures all investment and transaction fees and costs that have been charged to members or otherwise affected member balances during the reporting period. It includes all investment and transaction fees and costs that would appear in the Periodic Statement for the superannuation product …*
     >
     > *The investment and transaction fees and costs should align to fees and costs disclosed to members to meet the Australian Securities and Investments Commission's Regulatory Guide 97 ('Disclosing fees and costs in PDSs and periodic statements') obligations for superannuation products in relation to fees and costs disclosure requirements for periodic statements.*

     In other words, SRS 332.0 requires that trustees report fees and costs as determined for **periodic statements**, and accordingly a change that applies only to PDSs does not change the amounts to be reported to APRA.

     Therefore, unless APRA also modifies SRS 332.0, the proposed amendments do not change the amounts that will be counted for the performance test.

6. Subject to our comments in paragraph 2, 3 and 4, the Committees suggest that, if this change is implemented, the revised calculations should also apply to periodic statements—i.e. disclosure of transaction costs in periodic statements should use the same data as PDS disclosures. Alternatively, ASIC may wish to engage with APRA to modify the relevant reporting standards to align with PDS disclosures rather than periodic statement disclosures.

Unnecessary additional costs will be incurred if the proposed amendments are removed following ASIC's planned broader review of RG 97

7. The Superannuation Committee understands that superannuation funds have an end-to-end process which collects fees and costs information from all fund managers that the superannuation fund is invested in and calculates RG 97 amounts for PDS disclosure purposes, annual and exit statement purposes and APRA reporting

purposes. This is a significant and time-intensive process and can involve both spreadsheet calculations and IT systems. The Financial Services Committee notes that there is also a similarly significant process involved in the calculation of management fees and costs by the responsible entities of the managed funds in which the superannuation funds invest. A duplication of calculations, one for PDSs and one for periodic statements, would increase this burden.

8. The Committees expect that the changes contemplated by the proposed amendments will likely result in superannuation funds and managed funds incurring significant costs to update their processes and IT systems. However, ASIC has signalled that the proposed amendments could be an interim measure. ASIC has suggested that stamp duty disclosure would be re-considered as part of an overall RG 97 review with the potential for further changes arising from that review, including removing stamp duty disclosure, and that the timetable for this process would be such that the changes could be implemented during the 2026–27 financial year.

9. This means that superannuation funds and managed funds could incur significant costs to comply with the proposed amendments (e.g. system builds and updates) and then significant costs a relatively short time later to further update their processes and IT systems following the overall RG 97 review.

10. For the reasons set out in the remainder of this letter, the Committees recommend that ASIC exclude stamp duty on real property transactions from the Fees and Costs Summary section in the PDS as an immediate and final step in order to reduce compliance costs associated with RG 97.

The case for exclusion of stamp duty from transaction costs

11. The Committees appreciate that ASIC is already minded to modify the impact of disclosure of stamp duty as part of transaction costs, but note the following in support of that approach, for completeness. ASIC has indicated that it seeks to address concerns about stamp duty being a large irregular cost which may misrepresent the actual volatility of a fund's fees and costs structure, and the Committees share that concern.

Stamp duty is of a different character to other expenses

12. Stamp duty is different in character from other transaction costs such as brokerage on securities. It is a tax paid as part of the purchase price of real property, which is typically treated for accounting purposes as part of the capital cost of the asset, not as a current expense.

13. The Committees infer that the original purpose of transaction costs disclosure was to ensure that investors are aware of the difference between funds with high and low costs for turnover of investments. For example, investors may prefer not to invest in an equity fund with high brokerage levels that might indicate "churning". The nature of real estate investments means that high turnover of assets is extremely unlikely—they are inherently long-term investments.

14. Further, the original principle of management fees and costs disclosure before the publication of RG 97 was that disclosure should state the costs that an investor would

incur from investing through a managed fund structure, that is, costs they would not incur if they acquired the same assets directly. A direct investor in real estate would incur the stamp duty, so in essence it is not of a management cost character.

15. There is therefore a strong case for stamp duty to be disclosed differently from other types of transactional expenses incurred in a managed fund.

Expert analysis supports a different treatment

16. The Committees consider ASIC Report 581 Review of ASIC Regulatory Guide 97 from Darren McShane dated July 2018 to be instructive on the relevant issues.[2] Importantly, Mr McShane recommended that items disclosed in the headline tools (the Fees and Costs Summary and Fee Example) should not distort the narrative (for example, some individual items could be so large that, when aggregated into a single comparative figure, they overwhelm other potentially more relevant items).

17. Mr McShane specifically identified that property operating costs and implicit transaction costs should not sit in the headline tools because, amongst other reasons, they are driven by asset class and structure rather than provider efficiency. As a result, they can skew comparisons if aggregated in headline figures.

> *The key challenge in considering the place of transactional and operational costs disclosure is their relevance and reliability as a comparative indicator.*
>
> *Transactional and operational costs are necessarily calculated on a backward-looking basis (they are currently determined by looking to the last financial year, although it is noted that in some jurisdictions this is done as a multi-year average) and disclosure practices suggest that industry feel uncertainty around the forward reliability of such figures (many PDSs include warnings in the Fee Template that the figures can vary and should not be relied upon as a guide to future costs).*[3]

18. Mr McShane also recommended the exclusion of borrowing costs for a number of reasons, including because of the potential for its distortionary effect.

19. The Committees understand that Mr McShane focussed on these three costs because they were the subject of significant consultation and the RG 97 regime introduced in September 2017 had specific rules for each of them.

20. On the other hand, while Mr McShane noted the volatility of performance fees, he didn't comment that these amounts had the potential for distortion. The Committees also note that performance fees did not have the same level of scrutiny or debate during the consultation period (compared to property operating costs, implicit transaction costs and borrowing costs). It appears that the purpose of Mr McShane recommending the disclosure of performance fees over a 5-year average was because their high volatility made disclosure based on 1-year an unreliable indicator of future fee impacts[4] and that the 5-year average was recommended for consistency with European Union regulation.

---

2 ASIC (prepared by Darren McShane), *Review of ASIC Regulatory Guide 97: Disclosing fees and costs in PDSs and periodic statements* (Report 581, 24 July 2018).

3 Ibid, 125.

4 Ibid, 142.

21. The Committees consider that the characteristics of stamp duty are similar to property operating costs, implicit transaction costs and borrowing costs. It is a large, irregular, unavoidable one-off cost that arises for direct acquisitions of property, but not for other assets, contributing to volatility and systemic bias when incorporated into transaction cost disclosures in the Fees and Costs Summary. This can make options investing directly in property appear more expensive and volatile than otherwise comparable options investing through listed real estate investment trusts or alternative structures, even where the economic impact of the structure choice is neutral over time, thereby distorting both consumer choice and superannuation trustee portfolio construction.

22. The Financial Services Committee also notes that stamp duty is not a cost that is recovered through the buy-sell spread. This is because the stamp duty does not arise as a consequence of an investor buying or selling their units in the relevant fund. It is incurred due to the fund purchasing one large, illiquid asset to hold for the long term. This is different in nature to, for example, the incurring of brokerage as a transaction cost—where additional securities are acquired or disposed of due to applications and redemptions—in a liquid managed fund which frequently processes applications and redemptions. In the latter case the brokerage may be wholly or partly recovered in the buy-sell spread. Consequently, transaction costs net of the buy-sell spread look higher for funds that transact in real property assets compared with those that don't.

Complexity and potential confusion

23. The Committees also note the following complexities created by the proposed amendments:

- in most cases, all transaction costs for all superannuation investment options other than stamp duty would be calculated by reference to the amount incurred in the prior financial year. The current disclosure in most PDSs (which states that transaction costs are for the prior financial year) would need to be updated to explain the different calculation methodology for stamp duty, creating additional complexity; and

- RG 97 is designed to require disclosure of net transaction costs in the Fees and Costs Summary, being the total transaction costs net of any buy/sell spread. This calculation would be complicated because the buy/sell spread would be netted off against the sum of the 6-year average stamp duty and prior year other transaction costs. This again would be complex to explain to retail clients.

Proposed alternative approach

24. The Committees suggest that the complexity, misalignment and cost described in paragraph 3 could be avoided while still achieving ASIC's laudable objective of levelling the playing field between real estate funds and other investments, if stamp duty were simply removed from the transaction costs definition now.

25. This would avoid two changes to systems for calculating and reporting fees and costs.

26. The Committees recognise that it is important for investors to be aware that stamp duty is a cost incurred in acquiring real estate assets, and to ensure that the PDS disclosure provides sufficient transparency.

27. If ASIC is concerned about the effect on consumers' information needs if stamp duty is not included in calculation of disclosed fees and costs, the Committees submit that those needs could be addressed by requiring an estimate of stamp duty costs to be disclosed in the Additional Information section of the fees and costs section of a PDS, instead of in the transaction costs calculation that is used in worked examples in the PDS, superannuation fund disclosure and in periodic statements.

If the proposed amendments were to proceed, transitional provisions should apply

28. As noted above, the Committees do not support making the amendments in the proposed form ahead of the pending broader review of RG 97. If ASIC does nonetheless decide to proceed with the proposed amendments at this time, the Committees wish to raise some concerns about the implementation process.

29. The draft instrument is expressed to commence the day after registration and so the proposed amendments would commence on the day after registration. This would trigger immediate obligations on trustees of superannuation funds and responsible entities of managed investment schemes to recalculate transaction costs, either issue online PDS updates or updated PDSs and notify existing retail clients of the calculation changes.

30. However, each of these steps takes appropriate time to consider and implement. In practice, trustees and responsible entities will require time to collect historical stamp duty data at the requisite granularity, including data uplift from interposed vehicles, validate calculations, and update disclosure controls and systems.

31. RG 97 recognises that end-of-year updates and reasonable estimates may be necessary for cost items, reinforcing the operational complexity of enacting immediate changes.[5] Accordingly, the Committees propose the following:

- a deferred mandatory commencement of 24 months from registration with an optional opt-in from the date of registration for issuers ready to implement early;

- confirmation that adopting seven-year averaging does not, of itself, trigger significant event notice requirements under section 1017B of the *Corporations Act 2001* (Cth), consistent with RG 97's approach to apparent increases arising from methodology changes;[6] and

- clarification that the explanatory requirement added to paragraph 209(j) may be satisfied at a product level, rather than option by option, where the methodology is uniform to avoid undue length while maintaining clarity.

---

[5] RG 97.381, RG 97.382 and 97.430.
[6] RG 97.20.

32. The Committees submit that these measures would reduce the risk of stranded implementation costs if the planned broader review determines that stamp duty should be excluded from transaction costs in the Fees and Costs Summary.

Form of consultation

33. The Committees are grateful to ASIC for providing a draft of the proposed form of Instrument as part of the consultation materials. This allows a more precise and focused response to the consultation from a legal technical perspective, and we would be pleased if ASIC adopted this approach as a consistent practice in consultations. In addition, it would facilitate more well-informed responses from a broader segment of the regulated population if, in future, changes to be made by Instrument could be shown in context, through publication of a marked-up version of the parts of the legislation that they propose to amend, in addition to the draft instrument that would give effect to those amendments.

Conclusion

34. The Committees would welcome the opportunity to discuss this submission. In the first instance, please contact the chair of the Superannuation Committee, Joanne Dwyer, [redacted]; or Celeste Norman, Funds and Wealth Management Lead, of the Financial Services Committee [redacted]

Yours sincerely



James Popple
Chief Executive Officer