

13 September 2021

Retirement, Advice and Investment Division
Treasury
Langton Cres
Parkes ACT 2600

Via email superannuation@treasury.gov.au

Dear Sir/Madam

Financial and auditing requirements for superannuation funds

Chartered Accountants Australia and New Zealand (CA ANZ), CPA Australia and the Institute of Public Accountants (IPA) (“**the Joint Accounting Bodies**”) welcome the opportunity to provide comments on the exposure draft *Treasury Laws Amendment (Financial Reporting and Auditing Requirements for Registrable Superannuation Entities) Bill 2021* (“**the draft Bill**”).

The Joint Accounting Bodies represent over 300,000 professional accountants in Australia and internationally. Our members work in diverse roles across public practice, commerce, industry, government and academia.

The Joint Accounting Bodies broadly support the draft Bill. We agree that there is a need to clarify the requirements around, and increase the transparency of, reporting by Registrable Superannuation Entities (RSEs). Whilst we support the proposals and broadly agree with the premise of using publicly listed companies as a benchmark for introducing statutory financial reporting and audit requirements for RSEs, we note that there are important differences between the characteristics of RSEs and those of publicly listed companies, as well as the ultimate user-needs of financial reports prepared by them.

In the limited time available to us to prepare this submission, we have not been able to identify every unintentional regulatory overlap.

We make the following recommendations:

- A whole of government approach to regulatory policy should be adopted.
- Opportunities to streamline regulatory processes and address instances of regulatory overlap should be identified.
- An explicit statutory requirement should be introduced for RSEs to make annual financial reports available on their website.
- Annual financial report access fees normally charged by the Australian Securities and Investments Commission (ASIC) should be waived in the instance of RSE reports.
- RSEs should have an explicit statutory requirement to prepare annual financial statements in accordance with the Australian Accounting Standards (AAS).
- Preparation of financial reports for sub-funds should be deferred until the reporting objective, and the definition of “sub-fund”, are clarified.
- The effective date for funds publishing interim financial statements should be delayed for at least two years after the legislation is enacted, so that a cost/benefit analysis can be undertaken to determine whether this requirement should be retained.



- Disclosures should reflect fee categories which help to differentiate the services which may create a threat to the auditor's independence, by inclusion of an additional category for "audit-related services".
- RSEs auditors should have an explicit statutory requirement to comply with the Australian Auditing and Assurance Standards.
- Strict liability for auditors is inappropriate.
- Draft regulations should be released for consultation as soon as possible, with a timeframe for feedback that permits appropriate levels of consultation and for well-informed submissions to be made.

General comments

The draft Bill proposes to amend the reporting and audit requirements for RSEs, most notably by bringing RSEs into the *Corporations Act 2001*. This would have the following consequences:

- ASIC would have responsibility for the surveillance, investigation and enforcement of the financial reporting and auditing requirements of RSEs.
- RSE trustees would be required to keep accounting records for seven years.
- RSE licensees would be required to prepare and lodge with ASIC audited annual financial reports and reviewed half-yearly financial reports.
- Financial reports would contain financial statements and notes for the entity and each sub-fund, a directors' declaration and a directors' report, including an audited remuneration report, disclosure of fees for non-audit services and a statement that those services do not compromise auditor independence.
- RSE licensees would be required to appoint an individual auditor (RSE auditor), however the audit firm or company (where the RSE auditor is a member, employee or director) would also have obligations in respect of the audit. For example, there is an obligation to report suspected contraventions of the *Superannuation Industry (Supervision) Act 1993* ("the SISA"), Prudential Standards, *Financial Sector (Collection of Data) Act 2001* and Corporations Act to the Australian Prudential Regulation Authority (APRA) or ASIC.
- RSE auditors would not be permitted to play a role in the audit of an RSE for more than five out of seven successive years. RSE directors or ASIC (subject to consultation with APRA) would be able to grant approval to extend this period for up to two additional years.
- RSE auditors would be required to prepare, lodge and publish a transparency report if their firm or company conducts ten or more audits of specified types of entities, including RSEs, during the transparency reporting year.

This package of measures will complement other similar transparency projects either underway or recently completed for superannuation funds, such as:

- Portfolio holdings disclosure, scheduled to come into effect on 31 December 2021.
- The member outcomes requirements, administered by APRA, and which commenced on 1 January 2020.
- The design and distribution obligations, administered by ASIC, commencing 5 October 2021.
- The performance testing regime, administered by APRA, and which came into effect on 1 July 2021.
- Reporting requirements set by section 29QC of the SISA, designed to ensure that information provided to APRA as part of fund reporting is able to be equated with similar information required by ASIC. These are yet to come into effect.

During the consultation period, the Joint Accounting Bodies, together with the Association of Superannuation Funds of Australia and the Australian Institute of Superannuation Trustees, approached both Treasury and the Minister for Superannuation, Financial Services, Digital Economy and Minister for Women's Economic Security to have the consultation period extended. This is because it is currently the busiest time of the

reporting cycle for the financial year, where preparers of financial reports, as well as auditors, are engaged in finalising work for superannuation funds, listed entities, and other auditable entities. These requests for a meaningful extension to the consultation period were declined. However, we will continue to engage with our members after this submission is made to ensure that the legislation, once introduced to Parliament, is subject to proper scrutiny by the accounting profession and other stakeholders to ensure that the legislation meets its objectives in an efficient and effective manner.

Regulatory overlap

We are concerned about the potential for regulatory overlap created by these proposed legislative amendments. Ultimately, it will be fund members who bear additional compliance costs incurred by RSEs, which comes at a time when RSEs are being strongly encouraged to focus on cutting costs to improve member outcomes. RSEs already have significant reporting (and audit) obligations to APRA and their members, under the SISA, *Superannuation Industry (Supervision) Regulations 1994* (“the SISR”), Corporations Act, *Corporations Regulations 2001* and the Financial Sector (Collection of Data) Act.

For example, RSEs must deliver a number of reports about their financial affairs to APRA.¹ These reports are highly detailed and take considerable time and resources for RSEs to prepare and submit. Under the Prudential Standards, RSE auditors are required to provide:

- assurance over the information in 14 of these reporting forms,
- assurance over the RSE’s compliance with its risk management framework an extensive list of requirements, and
- assurance over the controls over compliance with prudential requirements and data provided in the reporting forms.

In addition, auditors are currently required to provide reasonable assurance over the financial statements which are prepared to support the reporting to APRA (which are also provided to the members – refer below). Many of these reports were created as part of APRA’s Superannuation Data Transformation project. We note that only Phase 1 (breadth) of this project has been completed, and that phase 2 (depth) and phase 3 (quality) have not yet commenced.

Regulatory overlap already exists, for example, with respect to section 29QB(1)(b) of the SISA and SISR 2.38, which requires RSEs to make publicly available a wide range of documents, including the annual report, annual financial statements and actuarial reports for the previous financial year. This is similar to the requirement in Corporations Regulation 7.9.45 for a trustee to make the most recent audited accounts, auditor’s report and actuarial report available to a fund member upon request.

The draft Bill creates potential for more overlap, for example, in relation to remuneration reporting, which is already required under section 29QB(1)(a) of the SISA and SISR 2.37 and which would be a requirement under 300C of the Corporations Act in the draft Bill. However, we note that the draft Bill proposes to remove section 29QB of the SISA. In the time available to us we have been unable to identify all the potential areas of overlap to ensure they have been removed in the draft Bill.

Through its data collection processes, APRA collects data on behalf of the Australian Bureau of Statistics.² Furthermore, under a Memorandum of Understanding, APRA and ASIC have committed to share data and intelligence about financial industry participants, including superannuation funds, to assist both

¹ <https://www.apra.gov.au/industries/33/standards>

² <https://www.apra.gov.au/sites/default/files/MoU-ABS-Australian-Bureau-of-Statistics.pdf>

organisations in their regulatory functions. This is a case where the burden from regulatory overlap can be reduced through better cooperation or information sharing between different regulators in line with the Commonwealth Government's Digital Transformation Strategy (DST).³ For example, we believe there is opportunity for RSE and Australian Financial Services Licensee (AFSL) breach reporting to be streamlined using the DST framework.

We encourage a whole-of-government approach to regulatory policy and look for opportunities to streamline regulatory processes and address instances of regulatory overlap, while maintaining strong safeguards, in line with the Commonwealth Government's Deregulation Agenda.⁴

We believe that the introduction of the requirements in the Bill requires a full 'red-tape reduction' review to ensure that there are no competing/conflicting legislative requirements introduced inadvertently by the new legislation. This would be consistent to other red-tape reduction reviews that have been conducted for listed entities in the past. The Joint Accounting Bodies would be pleased to work with Treasury, and other interested parties (in), to achieve these essential objectives, as part of a Treasury established working group

Public disclosure

RSEs are currently required by section 29QB(1)(b) of the SISA and SISR 2.38(2)(f) to make annual reports available on their websites. However, the term "annual report" is not defined so there is divergence in practice when it comes to the inclusion of financial reports in RSE annual reports. We support the introduction of an explicit statutory requirement for RSEs to make annual financial reports available on their websites to facilitate access by members and others.

The annual financial reports are also to be lodged with ASIC, presumably to be made available on a public register. Currently, access to certain documents such as financial reports from ASIC public registers requires a fee of \$40 per document. We do not believe the public interest objective of these proposals will be met if a fee has to be paid to access the documents from ASIC. We recommend that the \$40 access fee be waived for this purpose.

Sub-fund financial reporting

The current obligation for RSEs to prepare financial reports in accordance with AAS issued by the Australian Accounting Standards Board (AASB) is implicit in the requirement in paragraph 19(a)(i) of Prudential Standard SPS 310 *Audit and Related Matters*. That is, an RSE auditor is to provide reasonable assurance over the annual financial statements of each RSE prepared in accordance with relevant AAS issued by the AASB. We support the introduction of an explicit statutory requirement for RSEs to prepare annual financial statements in accordance with AAS issued by the AASB.

However, we have significant concerns about the proposal to include, within the RSE financial reports, the financial statements for each sub-fund of the RSE. We note that RSEs are currently required to provide APRA with information on the financial performance and financial position of each sub-fund.⁵ If the purpose of sub-fund reporting by RSEs is to assist with ASIC's regulatory oversight activities, a more cost-effective solution may be achieved by APRA sharing these reports with ASIC to allow it to undertake its financial reporting surveillance activities. We note that the current accounting standards requires funds to prepare the Statement of Changes in Member Benefits showing the split between defined contribution benefits and defined benefit member liabilities. Prior to introducing the requirement to produce reports for each sub-fund, consideration needs to be given to the benefits of doing this, whether materiality should be applied (e.g., if a sub-fund is not material for the fund as a whole, whether the fund is still required to prepare a sub-fund report) and whether

³ <https://www.dta.gov.au/digital-transformation-strategy/digital-transformation-strategy-2018-2025>

⁴ <https://deregulation.pmc.gov.au/priorities/streamlining-overlapping-regulations>

⁵ APRA SFR 320.1 and SFR 330.1

such reports are warranted given the costs involved and the relationship of these reports to the assessment of member benefits.

The AAS are underpinned by the *Conceptual Framework for Financial Reporting* which includes the Reporting Entity concept, the basis on which AAS based financial reports are prepared. The proposal for sub-fund reporting as part of RSE financial reporting does not align with the Reporting Entity concept. Neither does it align with the requirements in AASB 10 *Consolidated Financial Statements*, including the exception to consolidation for investment entities (on the basis that RSEs would meet the definition of investment entities under AASB 10).

Feedback we have received from our members indicates that the proposed definition of “sub-fund” is unclear and could lead to potential confusion as to what constitutes a sub-fund for reporting purposes. This is likely to give rise to inconsistencies in application that could undermine the public and member interest objectives of these proposals. We also understand that the definition of sub-fund proposed in the draft Bill is not the same as that used by APRA, which could create problems in practice. The length and complexity of financial statements of RSEs with many sub-funds is likely to undermine the objective of providing information that is useful to members and others.

Clarity is required regarding the intent behind the proposed sub-fund reporting and what it is trying to achieve. We recommend deferring the proposed financial reporting for sub-funds until such time as clarity is provided around the objectives of sub-fund financial reporting and the definition of sub-fund for these purposes.

Interim financial reporting

There are several new measures that need to be carefully considered from a cost-benefit perspective. For example, the proposed introduction of half-year financial reports that are audited or reviewed. We assume the intent behind this is driven by similar requirements for listed entities. While interim financial reporting by listed entities is an important source of periodic information for investors and lenders, we do not believe RSE members, who are the primary users of RSE financial reports, have similar information needs. Investments in superannuation entities generally tend to be long-term in nature, whilst investments in listed entities can be made across short, medium, and long terms. Unlike many investors and lenders in listed entities, RSE members are significantly less likely to reallocate their investments based on periodic financial reports.

Given the reduced information-utility of interim financial reports as described above, the cost of preparing interim financial reports, and having them reviewed or audited, is likely to be an unnecessary compliance cost which will ultimately be borne by the RSE members. If the purpose of interim financial reporting by RSEs is to assist with ASIC’s regulatory oversight activities, a more cost-effective solution may be achieved by repurposing the periodic financial information RSEs lodge with APRA to fulfil ASIC’s financial reporting surveillance activities.

If the Government decides to proceed with the proposal for half-year financial reports, we recommend the effective date for this requirement be two years after the legislation is enacted. An effective date of financial years beginning on or after 1 July 2022 means the first half-year financial reports would be required for 31 December 2022, so comparatives would be needed for 31 December 2021. In our view this does not provide an adequate transition period for RSEs or external auditors, particularly given the current super data transformation project that APRA currently has underway which will not be completed for some time.

Non-audit services disclosures

We support the inclusion of disclosures in the directors’ report for a RSE (under section 300C of the Corporations Act) regarding services provided by the external auditor which may create a threat to independence, along with a confirmation that the directors are satisfied that those services do not compromise the auditor’s independence. However, we are of the view that those services which may be considered as creating a threat should not include reasonable or limited assurance services required to be provided under

the Prudential Standards. These assurance services are likely to be captured by the term “non-audit services”, which are defined as “services other than services related to the conduct of an audit” (see definition of “non-audit services provider” in section 9 of the Corporations Act).

Under current legislative requirements, an RSE’s external auditor must provide limited assurance that the systems, procedures and internal controls of the RSE operated effectively for compliance with all applicable prudential requirements and provision of reliable data to APRA under the reporting standards, as well as on the RSE’s compliance with their risk management framework. For specified APRA reporting forms, the RSE’s external auditor must perform a reasonable, or in some cases a limited, assurance engagement on whether the forms have been prepared in accordance with the Prudential Standards and are consistent with the RSE’s audited financial statements. A reasonable assurance engagement is also required on the trustee’s compliance with a range of legislative requirements. Although these assurance services would not all fall within the definition of “audit” under the Corporations Act they are necessary for the auditor to conduct.

We suggest that relevant fee disclosures should reflect fee categories that help to differentiate the services which may create a threat to the auditor’s independence. This could be achieved by that inclusion of an additional disclosure category for “audit-related services”.

Consideration also needs to be given as to whether accounting firms could supply services to major service providers of the RSE which may or may not involve provision of audit work for the RSE. For example, every RSE is required to use a custodian to hold the super fund’s assets. There are many instances where a firm provides an audit function to a custodian and may also be an RSE auditor. Where this occurs, the audit function at the custodian may provide specified assertion reports to the RSE which is used by the RSE auditor to support part of the financial statement audit work.

Strict liability

We support the use of the auditing and assurance standards issued by the Auditing and Assurance Standards Board (“the AUASB standards”) in the draft Bill. The obligation for RSE auditors to comply with the AUASB standards is currently implicit in paragraph 7(b) of Prudential Standard SPS 310 *Audit and Related Matters* which requires the terms of engagement between the RSE licensee and the RSE auditor to include that the RSE auditor must comply with the AUASB standards. An explicit statutory requirement for RSE auditors to comply with the AUASB standards would further strengthen and clarify this existing obligation.

However, the imposition of strict liability for breaches of the AUASB standards (section 307A of the Corporations Act) continues to be a major concern for the auditing profession. If charged with a strict liability offence, the prosecution does not have to prove intention, knowledge, recklessness or even negligence. This leads to liability regardless of fault and potentially imposes criminal liability, which is arguably not appropriate when principles-based standards are being used (i.e., the AUASB standards), which require a subjective determination of compliance. In applying the AUASB standards, auditors use their professional skill and scepticism to exercise judgement.

Strict liability in this context is unique to Australia. By contrast, in similar regimes overseas, such as the United Kingdom, United States, Hong Kong and Singapore, liability depends on either the intentional or the negligent infliction of harm.

The introduction of further regulation

We note that the draft Bill amends or inserts several sections of the Corporations Act to refer to regulations which are yet to be made:

- Item 37 amends section 292 to allow regulations to be made to provide for details to be included in an RSE’s financial report and directors report.

- Item 49 inserts a new section 300C which will provide for details to be included in remuneration reports.
- Items 80 and 81 insert new section 314AA and amends section 315 to require superannuation funds to provide financial reports, director's reports and auditor's reports publicly within three months in accordance with the regulations.
- Items 85 and 87 amends sections 319 and 320 to allow regulations to be made to specify the manner of lodgement of reports, as well as their form.
- Item 91 amends section 322 to allow regulations to be made to specify details of how and when amended reports will be made available on websites.
- Paragraph 1.98 of the exposure draft explanatory materials explains that regulations currently made under section 29QB of the SISA will be remade in the Corporations Regulations.

We note that the draft regulations have not been issued for consultation alongside the draft Bill. The intention of this reform package appears to be to ensure that reporting and auditing requirements for RSEs are of a similar level to those for other entities with broadly similar information needs, such as publicly listed companies. However, without publication of the wording of proposed regulations, we are not able to comment fully on whether the proposals do align with what is currently required by other comparable entities. We recommend that draft regulations should be released for consultation as soon as possible with a proper timeframe for feedback that permits appropriate levels of consultation and for well-informed submissions to be made.

Should you have any questions about the matters raised in this submission or wish to discuss them further, please contact Richard Webb, Policy Advisor Financial Planning and Superannuation at CPA Australia at Richard.Webb@cpaaustralia.com.au and Tony Negline, Superannuation Leader at Chartered Accountants ANZ at Tony.Negline@charteredaccountantsanz.com.

Yours sincerely



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