May 25, 2021

Director, Retirement Income Policy Division  
Treasury  
Langton Cres  
Parkes ACT 2600

Email: [superannuation@treasury.gov.au](mailto:superannuation@treasury.gov.au)

Your Future, Your Super Exposure Draft Regulations

**Submission by the Responsible Investment Association Australasia**

The Responsible Investment Association Australasia (RIAA) welcomes the opportunity to make a submission to in relation to the exposure draft of the Your Future, Your Super Regulations (‘the Regulations’). The scope of RIAA’s submission relates to Schedules 1, 2 and 3 being respectively the way the portfolio holdings disclosures are organised, annual members’ meetings, and use of goods or services to influence employers/regulation making powers. This submission builds on RIAA’s submission to Treasury dated 12th December 2020 and to the Senate Economics Legislation Committee 17th March 2021.

**About RIAA, its members, and interest in RSEs**

RIAA champions responsible investing and a sustainable financial system in Australia and New Zealand and is dedicated to ensuring capital is aligned with achieving a healthy society, environment, and economy. With over 350 members managing more than $9 trillion in assets globally, RIAA is the largest and most active network of people and organisations engaged in responsible, ethical and impact investing across Australia and New Zealand. RIAA’s membership includes superannuation funds, fund managers, banks, researchers, brokers, impact investors, property managers, community trusts, foundations, faith-based groups, financial advisers, financial advisory groups, and others involved in the finance industry.

RIAA is a mission-based organisation that derives approximately 60% of its revenue from membership. As of December 2020, RIAA had 23 RSE members providing 6% of its annual operating revenue. RIAA is committed to improving its members’ capacity to deliver stronger outcomes for beneficiaries and we work to protect consumers more broadly. RIAA believes strongly in the importance of transparency and accountability of RSEs to their beneficiary groups, as evidenced by our work to improve the accountability of the superannuation industry such as:

1. Operating the world’s longest running [*Certification Program*](https://responsibleinvestment.org/ri-certification/) covering responsible investment products (as being true-to-label);
2. Hosting the consumer site, [*Responsible Returns*](https://www.responsiblereturns.com.au/) which assists retail investors with finding responsible investment information on superannuation and other investment products; and
3. Publishing the biennial [*RI Super Study*](https://responsibleinvestment.org/resources/super-study/) which assesses the 50 largest APRA regulated superfunds against a framework of good governance based on ISO9000 quality systems that rewards funds in part for their formal investment decision making processes, record keeping and disclosures. The publications includes a leader board (pp4, 30).

**RIAA’s position with respect to the Regulations**

Overall, RIAA commends the intent of these proposed laws and their enabling regulations which is to deliver stronger outcomes from superannuation members. However, as currently drafted, RIAA has concerns about the Regulations, that risks undermining the intent and effectiveness of their implementation. In particular, the Regulations as drafted:

* Risk contributing to decision-making uncertainty for trustees specifically as they require a reversed burden of proof without a codified list of prohibited behaviours;
* Risk unintentionally confusing beneficiaries, in particular due to the manner in which portfolio holdings are proposed to be disclosed;
* Risk undermining a trustees’ commercial position to act in the best financial interest of members, due to requiring pricing information to be disclosed for certain asset classes whereby there are good reasons to protect this information as commercial in confidence, and where the disclosure of them adds negligible benefits to the intended user of this information, the beneficiary; and
* Risk further reducing clarity and contributing to industry uncertainty, by providing regulation-creating powers outside of the parliamentary process with respect to imposing additional requirements on trustees in order to fulfill their best financial interests duty.

With refinements to the Regulations based on considered stakeholder input (such as the way that portfolio holdings disclosures are organised), we believe the measures can be important contributors to a better functioning super system, that supports greater engagement and outcomes with and for beneficiaries.

**Schedules 1 Portfolio holdings disclosures (PHD)**

RIAA is highly supportive of the introduction of PHD measures for RSEs; we have advocated for many years that PHD is a critical element of transparency for the underlying beneficiary members of the superannuation funds. Whilst we welcome PHD, we do believe there are areas that could be strengthened to better deliver the intent, which is to provide better transparency and accountability across the sector and support better investment decisions which are in the best financial interests of superannuation beneficiaries.

RIAA has been operating the Responsible Investment Certification Program since 2005; transparency for superannuation customers and beneficiaries is an integral part of the Program’s objectives. Certified funds, including superannuation products and options, must disclose their full holdings to comply with the Requirement P5 of the [Standard](https://responsibleinvestment.org/wp-content/uploads/2020/08/RI-Certification-Standard.pdf) and be entered into the Program. RIAA’s Certified product disclosures require:

1. **a full look through** to the ultimate underlying assets so that consumers have data that they need and want (not just the name of a fund manager), including how to manage holdings disclosure for short-selling for example
2. holdings to be **presented in an aggregate format** such that it is meaningful and fit-for-consumer purposes (not disaggregated where they must manually calculate overall exposure to a particular holding)
3. **only the *name* of the holdings** to be publicly disclosed (so as not to unduly jeopardise the commercially sensitive pricing for particular asset classes including private equity, where the disclosure of these would run counter to the intent of delivering ‘best financial interest of members’) Click [here](https://responsibleinvestment.org/wp-content/uploads/2021/03/Guidance-Note-Portfolio-Holdings-Disclosure.pdf) for the Certified RI Standard relevant Guidance Note
4. **holdings to be updated at least six-monthly** with no longer than a 90-day lag, also to accommodate the needs of funds with respect to investment and portfolio construction intellectual property.

Once successfully through the assessment process, Certified RI Products are listed on RIAA’s consumer site, [*Responsible Returns*](https://www.responsiblereturns.com.au/) – which assists investors with finding responsible investment information on superannuation and other investment products.

To deliver on the intent of the Bills and the proposed Regulations – improving accountability and member outcomes in superannuation - RIAA recommends that Treasury:

* further considers the approach to PHD taken by [RIAA’s Certification Program](https://responsibleinvestment.org/wp-content/uploads/2020/08/RI-Certification-Standard.pdf), based on experience from running this program for 16 years in the Australian marketplace, covering 210 products/options, of which 38 are issued by 10 APRA-regulated RSEs
* removes the requirement to disclose pricing information for all asset classes (or at least commercially sensitive ones, such as private equities). It is not in the best financial interest of members to have market-sensitive information in the public domain
* requires a look-through that is meaningful to the end-user (beneficiary) and goes beyond associated entities (i.e. fund manager names) to the holdings themselves in order to deliver on the objective of transparency. When examining portfolio holdings, beneficiaries are looking to understand the extent to which the portfolio aligns with their investment objectives and to do this require the actual names of the assets themselves, in particular the companies that the RSE is invested in – directly or via underlying managers
* revises any disclosure requirements to enable underlying holdings disclosure in an aggregate format as this is a format that is better fit-for-the purpose of beneficiaries.

We commend these improvements to strengthen the outcomes of the Regulations once operational. The passage of laws that enable full portfolio holdings disclosure, and that address the recommendations above, shall bring Australia’s superannuation industry in line with global standards on financial product disclosures.

**Schedule 2 Annual members’ meetings**

RIAA supports the scope of the proposed Regulations with respect to annual members’ meetings and notifications.

**Schedule 3 Use of goods or services to influence employers/regulation-making powers**

The adoption of the proposed reversal on burden of proof for RSE trustees may result in unworkable uncertainty for trustees when attempting to exercise their fiduciary duties to other people’s money. Trustees depend on having a clear and reliable basis on which to perform their expected duties. Due to the proposed reversal of the burden of evidential proof, it is appropriate that ‘prohibitive payments’ be codified in the Act itself – this would be a schedule of activities deemed to not be in the best financial interests of beneficiaries – and not be left to the Regulations which may be subject to change by parties outside law-making entities.

RIAA recommends that Treasury:

1. provides trustees with a register/list of activities deemed to not be in the best financial interests of beneficiaries and have this codified in the law such that trustees have a clear and reliable basis on which to perform their revised expected duties; and so that further uncertainty is not created
2. for the reasons articulated in 1. above, ensure a schedule of complying and non-complying expenditures is codified in the Act itself
3. ensures the Act/Regulations do not reverse the burden of evidential proof. This measure, according to the [Law Council of Australia](https://www.lawcouncil.asn.au/publicassets/019808a4-e859-eb11-9438-005056be13b5/3947%20-%20Your%20Future%20Your%20Super%20Package.pdf) runs counter to the universal principles of law and may act as a barrier for the sector retaining and attracting suitably qualified and principled peoples to the position of RSE trustee (potentially impacting member outcomes and the broader Australian economy in which RSEs invest); it may further impact the ability of trustees to secure indemnity insurance
4. to enable trustees to carry out their best financial interests duty with certainty and predictability, removes the regulation making powers in Schedule 3 of the Bill
5. reviews all provisions and ensure they do not unintentionally limit consumer engagement and choice (such as through prohibiting expenditure on developing and promoting investment options and/or promoting improved financial literacy with existing or potential members).

RIAA welcomes strong and decisive action to improve the governance of the financial services sector where consumer best interests are pursued, however several revisions need to be considered and enacted to ensure that the Regulations – along with the Acts – deliver what was intended – to deliver stronger outcomes from superannuation members.

Yours sincerely,

Nicolette Boele

Executive, Policy and Standards

**Responsible Investment Association Australasia**