

2013-2014-2015-2016

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SUPERANNUATION LEGISLATION AMENDMENT (TRANSPARENCY
MEASURES) BILL 2016

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Small Business and Assistant Treasurer, the Hon Kelly O'Dwyer MP)

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
Bill	Superannuation Legislation Amendment (Transparency Measures) Bill 2016
Corporations Act	<i>Corporations Act 2001</i>
FUM	Funds under management
PHD	Portfolio Holdings Disclosure
Regulation	Superannuation Legislation Amendment (Transparency Measures) Regulation 2016
Review	Super System Review (The Cooper Review)
RIS	Regulation Impact Statement
RSE	Registrable superannuation entity
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>

General outline and financial impact

Outline

The Superannuation Legislation Amendment (Transparency Measures) Bill 2016 (the Bill) makes amendments to the *Corporations Act 2001* (Corporations Act) to increase the quality of information available to superannuation fund members and employers while ensuring that the current obligations in the Corporations Act in relation to choice product dashboards and portfolio holdings disclosure are workable for industry.

Improving the quality of information through improved disclosure will increase transparency and allow consumers and employers to make informed decisions about superannuation savings.

Transparency through improved disclosure is critical to the efficiency and operation of Australia's market based superannuation system, as it improves understanding, awareness and engagement across the community.

The two measures contained in this Bill, choice product dashboards and portfolio holdings disclosure (PHD), will improve transparency while reducing potential costs for the superannuation industry.

Date of effect: 1 July 2017.

Financial impact: Low. This Bill will have no financial impact on the Commonwealth.

Human rights implications: This Bill does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 3, paragraphs 3.1 to 3.8.

Summary of regulation impact statement

Regulation impact on business

Impact: In accordance with the Government's best practice regulation requirements, a Regulation Impact Statement (RIS) for early assessment was prepared, and assessed by the Office of Best Practice Regulation. The RIS will be finalised before the Superannuation Legislation Amendment (Transparency Measures) Regulation 2016 (the Regulation) is made.

Chapter 1

Choice product dashboards

Outline of chapter

1.1 The Government wishes to ensure the public disclosure of risk, return and fee information for regulated superannuation funds is easily accessible to consumers, while minimising the compliance burden on superannuation funds of such disclosure.

1.2 To achieve this objective, the Government will amend the Corporations Act to limit the requirement for a trustee of a regulated superannuation fund with five or more members to produce a choice product dashboard to the fund's 10 largest choice investment options, as measured by funds under management (FUM). The current requirement prescribes the provision of a product dashboard for all the fund's choice investment options. A power will be provided to prescribe by regulation how the dashboard must be displayed on the fund's website, and how information on the dashboard is to be set out.

Context of amendments

1.3 The Corporations Act requires trustees of certain superannuation funds to publish on the fund's website a product dashboard. The dashboard provides a summary of information for consumers about each of the fund's MySuper and choice investment options.¹ Product dashboards are intended to assist members and other users such as employers, review agencies and the media to more easily compare investment options. The dashboard is also intended to assist members to decide whether their current superannuation investment option is suitable for them or whether to switch into a different investment option.

¹ The product dashboard requirements were introduced by the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012*, with changes being made by the *Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act 2013*.

1.4 The product dashboard requirements are set out in section 1017BA of the Corporations Act. In summary:

- Subsection 1017BA(1) provides that trustees of regulated superannuation funds must produce a product dashboard for each of their MySuper products and choice investment options, and ensure that each product dashboard is available publicly on the fund website, is updated as required and contains the required information;
- Subsections 1017BA(2) and (3) provide that certain information must be included, in accordance with the regulations, in product dashboards;
- Subsection 1017BA(4) provides that product dashboards do not have to be published for investment options within a choice product in certain circumstances; and
- Subsection 1017BA(5) defines terms for the purposes of the product dashboard. The terms 'choice product', 'member', 'MySuper product', and 'regulated superannuation fund' are defined as having the same meaning as in the *Superannuation Industry (Supervision) Act 1993* (SIS Act) as these terms are used with the same underlying concepts and are superannuation specific.

1.5 The product dashboard requirements took effect for MySuper products on 31 December 2013. The *Corporations Regulations 2001* specify the detailed requirements regarding the presentation and content of the information in a product dashboard for a MySuper product (regulations 7.9.07L-7.9.07W). Australian Prudential Regulation Authority (APRA) Reporting Standard SRS 700.0 sets out further detailed requirements for product dashboards.

1.6 The product dashboard requirements for choice investment options were scheduled to take effect from 1 July 2014. Regulations specifying the detailed requirements regarding the presentation and content of the information have not been made to date.

1.7 Australian Securities and Investments Commission (ASIC) Class Order [CO 14/443] originally delayed the requirement to provide choice product dashboards until 1 July 2015. ASIC amended the Class Order on 1 May 2015, deferring the start until 1 July 2016. The purpose of this deferral is to allow further consultation on both the legislation and regulations, and to provide industry with a reasonable period to prepare for the detailed presentation and content requirements after they are introduced.

Summary of new law

1.8 The new law amends the existing provisions relating to product dashboards in section 1017BA of the Corporations Act. An important change limits the requirement to provide a choice product dashboard to a superannuation fund's ten largest choice investment options, as measured by FUM, instead of for all investment options. Funds still have to provide a product dashboard for all their MySuper products.

1.9 A new power is provided to prescribe in regulations how a product dashboard must be displayed on a fund's website. This power will cover both MySuper products and choice investment options.

1.10 Certain types of choice investment options are excluded from the requirement to provide a product dashboard. A power to exclude further types of products by regulation is provided.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Trustees of regulated superannuation funds with five or more members must publish a choice product dashboard for each of their fund's ten largest choice investment options, as measured by FUM. This restriction is achieved through the new definition of a 'qualifying choice investment option' to which the dashboard requirements apply. For MySuper and choice lifecycle products, a separate dashboard must be provided for each lifecycle stage (in the case of choice lifecycle products, this rule only applies if the lifecycle product as a whole is among a fund's 10 largest choice investment options).	Trustees of regulated superannuation funds with five or more members must publish a product dashboard for each of the investment options within a fund's choice products.
Regulations setting out content and presentation requirements for choice product dashboards will be made separately.	Trustees must ensure that certain information is included, in accordance with the regulations, in a product dashboard for a choice product. Regulations setting out content and presentation requirements have not been made.

<i>New law</i>	<i>Current law</i>
Product dashboards must be available on the fund's website. Regulations can prescribe the manner in which MySuper and choice product dashboards must be disclosed publicly. Regulations prescribing relevant matters will be made separately.	Product dashboards must be available on the fund's website.
In addition to the existing exemptions, pooled superannuation trusts and eligible rollover funds will be exempted from the product dashboard requirements. A general power to provide further exemptions from the choice dashboard requirements by regulation will be inserted.	Product dashboards do not have to be published for investment options within a choice product in certain circumstances.

Detailed explanation of new law

Schedule 1 — Product dashboards

Corporations Act 2001

1.11 It should be easy for trustees of superannuation funds to navigate the dashboard requirements when complying with the law. As such, subtitles are inserted into the legislation for ease of reading. A new subtitle 'Making product dashboards publicly available' is inserted before subsection 1017BA(1). Subsection 1017BA(1) then sets out the requirements for making product dashboards publicly available. A further subtitle 'What product dashboards must set out' is inserted before subsection 1017BA(2). Subsection 1017BA(2) then establishes what must be set out for MySuper product dashboards and subsection 1017BA(3) establishes what must be set out for choice product dashboards. *[Schedule 1, item 1, subsections 1017BA(1) and (1A)]*

1.12 New subsection 1017BA(1) removes the requirement in existing paragraph 1017BA(1)(a) that a product dashboard must be available on a fund's website for each of its MySuper products and choice investment options. New paragraph 1017BA(1)(a) requires a product dashboard to be available at all times on a fund's website for each of a fund's MySuper products and ***qualifying choice investment options***. A power is included to provide an exemption through regulations from the product dashboard requirements for MySuper products. ***Qualifying choice investment option***

is defined as set out below in subsection 1017BA(4). [*Schedule 1, item 1, paragraph 1017BA(1)(a)*]

1.13 A product dashboard must set out the content for MySuper and choice products as prescribed in subsections 1017BA(2) and (3) respectively. The key content elements include: return target, returns, a comparison between return target and return, level of investment risk, and a statement of fees and other costs. Dashboard information must be updated within 28 days of a change occurring. ASIC's general view is that funds should update dashboards when they have all the necessary information, as discussed in ASIC Information Sheet 170. Existing paragraph 1017BA(1)(e) allows the regulations to prescribe how information must be set out in a product dashboard. New paragraph 1017BA(1)(d) includes this provision, and adds a new power for the regulations to prescribe how a product dashboard is to be displayed on a fund's website. The matters that will be prescribed using these powers are highly technical and detailed, and as such are not suitable for inclusion in the Act. They could include the detailed manner in which particular information, for example fee information, is presented, using specified formats. With regard to the display of product dashboards on a fund's website, this power could be used for example to prescribe how consumers can access the dashboard from the fund's homepage, the types of links required, and the file formats that must be used for the dashboard. [*Schedule 1, item 1, paragraphs 1017BA(1)(b), (c) and (d)*]

1.14 A new subsection (1A) is inserted after subsection 1017BA(1) providing an exemption from the product dashboard requirements for pooled superannuation trusts and eligible rollover funds (as defined below). The reason for this exemption is that pooled superannuation trusts have no individual members, and eligible rollover funds generally hold the assets of lost or inactive members. A power is also created to provide further exemptions through regulations. This power would be used if it should emerge that there are other types of products which are unsuitable for the production of a product dashboard. If a product dashboard is being prepared for a choice investment option for the first time, because it is one of the ***qualifying choice investment options*** as determined at the end of the previous financial year, then a period extending until 1 October of the current financial year is provided before the dashboard must be made available. This will provide trustees with sufficient time to make the necessary arrangements for publication of the dashboard. It is noted that this extended period will apply in the first year when the dashboard requirements come into effect, i.e. from 1 July 2017. This means that for choice investment options the first dashboards will have to be made available by 1 October 2017. Furthermore, if a different investment option falls within a fund's top 10 when measured on 30 June 2018, for example, a dashboard will be required by 1 October 2018. MySuper products do not benefit from this relief, as they are already under the obligation to publish

dashboards. For MySuper products new dashboards consistent with the requirements in this Bill (and any associated regulations) will have to be made available on 1 July 2017. *[Schedule 1, item 1, subsection 1017BA(1A)]*

1.15 Existing paragraph 1017BA(2)(b) allows the regulations to prescribe other information that must be set out in a MySuper product dashboard. APRA Reporting Standard SRS 700.0 sets out the requirements for the provision of information to APRA relating to product dashboards. An additional power is provided allowing the regulations to prescribe that APRA or ASIC may determine instructions for how that other information is to be displayed. This power enables APRA and/or ASIC to prescribe, where and if appropriate, the format for how the information must be displayed. *[Schedule 1, item 2, At the end of subsection 1017BA(2)]*

1.16 Subsection 1017BA(3) is amended to ensure that it only applies to **qualifying choice investment options**, i.e. a fund's ten largest choice investment options, as measured by FUM. *[Schedule 1, item 3, Subsection 1017BA(3)]*

1.17 The wording 'for each investment option offered within the choice product' is removed from paragraph 1017BA(3)(a). These words are not required, as they are superseded by the changes made in the previous item 3 that make it clear that this entire subsection only applies to **qualifying choice investment options**. *[Schedule 1, item 4, Paragraph 1017BA(3)(a)]*

1.18 Paragraph 1017BA(3)(b) allows the regulations to prescribe other information that must be set out in a choice product dashboard. An additional power is provided allowing the regulations to prescribe that APRA or ASIC may determine instructions for how such other information is to be displayed. This power is similar to that provided in relation to MySuper products, as explained above under item 2. *[Schedule 1, item 5, At the end of subsection 1017BA(3)]*

1.19 Subsection 1017BA(4) is amended to include a new definition of **qualifying choice investment options** to which the dashboard requirements apply. These are a fund's ten largest choice investment options, as measured by FUM. This means that each fund is only required to publish a maximum of ten dashboards for choice investment options (in addition to a dashboard for a MySuper product), as compared to the previous requirement where a dashboard had to be published for all of a fund's investment options. In calculating total FUM of an investment option, all funds should be included regardless of investment vehicle. For example, if an investment option is listed on multiple platforms, funds invested through all platforms should be aggregated in calculating total FUM for the investment option. It is noted that if a fund wishes to continue publishing a choice product dashboard, for example in a situation

where an investment option stops being one of its ten largest investment options, the legislation does not prevent it from doing so. Funds are able to display such dashboards as long as they are not misleading. *[Schedule 1, item 6, Subsection 1017BA(4)]*

1.20 A number of existing exemptions applying to guaranteed products and investment options limited to investing in a single asset are moved to new subsection 1017BA(4A). The single asset exemption will for example ensure that a direct investment in BHP shares using a platform is not treated as an investment option which is required to issue a product dashboard. The single asset exemption however does not exempt investment options simply because they are a single asset class. A power to exempt further types of investment options by regulation is included. This power would be used if further types of products are found to be unsuitable for the production of product dashboards. *[Schedule 1, item 6, paragraphs 1017BA(4A)(a), (b), (c) and (d)]*

1.21 Existing subsection 1017BA(4A), which allows regulations to determine under what circumstances the single asset exemption should apply, is retained as new subsection 1017BA(4B). *[Schedule 1, item 6, subsection 1017BA(4B)]*

1.22 A new subsection (4C) is inserted in section 1017BA amending the existing definition of *fee* in subsection 1017BA(5) to ensure that it applies to **qualifying choice investment options**. At the same time, the definition is simplified and shortened by using the defined term **excluded fee** (as defined below). This definition applies to fees that need to be set out in the product dashboard and refers to fees that may be charged under the SIS Act. Part 11A of the SIS Act establishes general fees rules which all regulated superannuation funds are required to comply with. This Part contains prohibitions and restrictions on certain types of fees, but does not prescribe fees which are allowed to be charged. Part 2C Division 5 prescribes the fees that can be charged for MySuper products. *[Schedule 1, item 7, subsection 4C]*

1.23 New subsection (4D) states that subsections 1017BA(1), (1A), (2), and (4C) apply to MySuper lifecycle products as if each reference to a MySuper product was a reference to each lifecycle stage included in the product. This means that a separate product dashboard must be prepared for each lifecycle stage of a MySuper lifecycle product, the reason being that each stage is likely to have a different mix of investments. Relevant definitions, including the definition of a lifecycle stage, are provided in subsection 1017BA(5). See the relevant paragraph below for further details. *[Schedule 1, item 7, subsection 1017BA(4D)]*

1.24 A similar approach is applied to choice lifecycle products in new subsection 1017BA(4E). However, because subsection 1017BA(4), which sets out the definition of **qualifying choice investment option**, is not

included in the scope of subsection 1017BA(4E), choice lifecycle products will be treated as one single product for purposes of calculating whether they are within a fund's top ten investment options by FUM. That is to say, the FUM for all the lifecycle stages included in the product must be aggregated for purposes of this calculation. If they are within the top ten investment options by FUM, new subsection 1017BA(4E) prescribes that they will have to produce a separate dashboard for each lifecycle stage, for the same reason as explained in the previous paragraph. [Schedule 1, item 7, subsection 1017BA(4E) and note]

1.25 A number of new definitions are inserted in subsection 1017BA(5). A **custodial arrangement** is defined to have the same meaning as in section 1012IA of the Corporations Act. **Eligible rollover fund** is defined as having the same meaning as in the SIS Act. The term **excluded fee** is defined to include activity, advice and insurance fees as defined in the SIS Act. This term is used to simplify the definition of **fee** in new subsection (4C). [Schedule 1, item 8, Subsection 1017BA(5)]

1.26 The definition of **fee** in subsection 1017BA(5) is amended to refer to the new definition in subsection (4C). [Schedule 1, item 9, Subsection 1017BA(5) (definition of fee)]

1.27 Five further definitions are inserted in subsection 1017BA(5). The first definition makes it clear that the term **investment option** includes choice products that do not offer multiple investment options.

1.28 Investment options acquired under a platform are intended to be captured by the dashboard requirement. For example, a dashboard is required for an investment option acquired under a platform where it is one of the fund's ten largest investment options by FUM and does not satisfy any of the other criteria exempting them from the dashboard requirements (for example by being wholly invested in another single asset). To put this beyond doubt an **investment option** includes financial products acquired under a **custodial arrangement**. The regulation-making power in paragraph 1017BA(4A)(d) could be used to narrow this inclusion if it is found that inappropriate financial products are captured.

1.29 While investment options acquired under a platform are intended to be captured by the dashboard requirement, the platform itself is not. To put this beyond doubt an **investment option** excludes a **custodial arrangement**. The reason for this clarification is that platforms cover large numbers of investment options and any whole of platform dashboard would have to use aggregated figures for fees, returns and risk. This would result in information that would be misleading in relation to the investments of a particular member, who would in all likelihood only have invested in a fraction of the available investment options. [Schedule 1, item 10, subsection 1017BA(5), investment option]

1.30 The second definition relates to the term ***lifecycle exception*** for a MySuper product by referring to the definition in subsection 29TC(2) of the SIS Act. That definition states that a ***lifecycle exception*** is a rule that allows gains and losses to be streamed to different groups of fund members based on age or other prescribed factors. The same definition is then applied in the case of ***qualifying choice investment options***.

1.31 The next definition of a ***lifecycle stage*** is linked to the definition of ***lifecycle exception*** in that it is defined as so much of a lifecycle MySuper product or ***qualifying choice investment option*** as relates to one of the groups of fund members to which gains and losses are streamed based on age or other factors.

1.32 ***Pooled superannuation trust*** is defined as having the same meaning as in the SIS Act.

1.33 The final definition concerns the important term ***qualifying choice investment option*** and states that the meaning of this term is given by subsection 1017BA(4). [*Schedule 1, item 10, Subsection 1017BA(5)*]

1.34 Section 1021NA sets out a number of offences in relation to the product dashboard requirements in section 1017BA. The wording of paragraphs 1021NA(1)(b) and (c) is amended to reflect the changes made to section 1017BA by this Bill. The fundamental offence remains the same, which is failing to comply with the requirement in section 1017BA to make a product dashboard publicly available. [*Schedule 1, item 11, Paragraphs 1021NA(1)(b) and (c)*]

Application and transitional provisions

1.35 Paragraph 1539(a) is amended to reflect the fact that the MySuper product dashboard requirements took effect from 31 December 2013. [*Schedule 1, item 12, Paragraph 1539(a)*]

1.36 Paragraph 1539(b) is amended to specify that the product dashboard requirements with regard to choice investment options will apply from 1 July 2017. This will provide industry stakeholders with sufficient time to prepare for the publication of their choice product dashboards as prescribed. As explained above, the first dashboards for choice investment options will have to be made available on 1 October 2017, and funds will need to comply with the new rules for MySuper products from 1 July 2017. The additional time for choice investment options is provided because funds will only be able to determine their top ten investment options after 30 June 2017. All MySuper products are already required to have a product dashboard, and

funds will have sufficient time to make changes, as the legislation and associated regulations are expected to be publicly available well in advance of the 1 July 2017 deadline. *[Schedule 1, item 13, Paragraph 1539(b)]*

Chapter 2

Portfolio holdings disclosure

Outline of chapter

2.1 This Chapter explains the amendments to the Corporations Act that refine the requirements for registrable superannuation entity (RSE) licensees to publish their portfolio holdings. The purpose of these amendments is to ensure that superannuation fund members, and other stakeholders including financial analysts, have access to information about the portfolio holdings of superannuation funds, while minimising the compliance burden on RSE licensees.

Context of amendments

Existing requirements for trustees to publish details of portfolio holdings

2.2 Under the current law trustees of an RSE (other than a pooled superannuation trust) must publish their fund's portfolio holdings on the fund's website twice a year (subsection 1017BB(1) of the Corporations Act).

2.3 The information must be sufficient to identify each financial product or other property, and the value of the investment in each financial product or other property. The legislation does not differentiate between assets held in a fund's associated entities and its non-associated entities. As such, the same level of disclosure is required.

2.4 Disclosure is required for all assets the fund invests in on a full 'look through' basis by including 'assets derived from assets' in the scope of investments covered by the provision. For example, this means that full disclosure must be made with respect to multiple levels of investments.

2.5 To enable trustees to meet these obligations, a party acquiring a financial product from another party must notify the second party if the purchase is being made using the funds of the RSE and provide the second party with details of the RSE (subsections 1017BC(1)-(2) of the Corporations Act). Where this occurs, the second party is required to provide the trustees of the RSE with information on the financial product or any other property acquired using assets of the RSE fund (subsection 1017BC(3) of the Corporations Act).

2.6 The existing portfolio holdings disclosure (PHD) requirements were introduced in 2012 by the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012*.

2.7 Commencement of these disclosure requirements was initially delayed until 1 July 2015 through ASIC Class Order [CO 14/443]. The requirements were originally due to take effect from 31 December 2013. ASIC amended the Class Order on 1 May 2015, deferring the start for PHD reporting until 1 July 2016.

2.8 Consultation on the existing PHD obligations indicated that there were significant compliance costs in collecting and collating data for all assets held indirectly (held by third parties). Concerns have also been raised by some superannuation funds about the requirement to disclose data which relates to private equity investments, unlisted assets and other commercial in confidence arrangements. The amendments in this Bill will address these and other concerns raised by industry stakeholders.

Summary of new law

2.9 The new law amends the existing PHD obligations in the Corporations Act. Two important changes are the removal of:

- the obligation to include information about financial products, or other property that non-associated entities have directly invested in; and
- the reporting obligations on parties to contracts and arrangements that acquire a financial product using the assets, or assets derived from assets, of an RSE.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
RSEs will be required to publish, for each of their investment options, information about the nature and value of financial products or other property that they, or an associated entity, have invested in.	RSEs are required to disclose information at the entity level to identify the nature and value of assets held directly, through associated entities and non-associated entities. For MySuper products that have a lifecycle option, RSEs are required to disclose assets held at each lifecycle stage.

<i>New law</i>	<i>Current law</i>
Information relating to the first investment in non-associated entities will need to be disclosed. Investments held through non-associated entities will not be required to be disclosed. A number of exemptions are provided to address situations where the disclosure of valuations may not be meaningful or in the best interests of members.	Information on all investments held by the RSE, including both associated entities and non-associated entities are required to be disclosed.
It is assumed that RSEs will be able to obtain sufficient information from associated entities in order to comply with their PHD requirements, and that no obligation in the law is required.	A party acquiring a financial product or other property from an associated entity using the assets of an RSE must provide notification that the financial product or other property is being acquired using the funds of the RSE and supply the details of the RSE.
No similar provision required as assets held through non-associated entities will not be required to be disclosed. RSEs will be able to obtain the required information from associated entities.	An entity holding financial products/other property acquired using the funds of an RSE is required to provide the RSE with information about the product/property being acquired. The entity will also have to notify the RSE about any other products/property acquired using assets of the RSE that are held by associated entities of the RSE. The information has to be sufficient to enable the RSE trustee to satisfy the PHD regime requirements.
No similar provision required as assets held through non-associated entities will not be required to be disclosed.	If purchased through an agent, the agent must notify the seller that the product/other property is being acquired using the funds of an RSE and supply the details of the RSE.

Detailed explanation of new law

Trustees must publish details of portfolio holdings

2.10 RSE licensees will continue to have an obligation to make publicly available the details of their portfolio holdings twice annually after each reporting day, which are 30 June and 31 December each year, by publishing this information on the fund's website within 90 days.
[Schedule 2, item 1, subsections 1017BB(1) and (6)]

2.11 The details published must include information sufficient to identify, for each investment option offered by the RSE:

- each financial product, or other property (disclosable assets) in which the RSE, or an associated entity of the RSE, has invested in; and
- the value of the investment in each financial product or other property, as specified in the definition of the term ***disclosable asset***, unless an exemption is provided in the regulations (see further explanation of this requirement and exemption in the next paragraph).

[Schedule 2, item 1, paragraphs 1017BB(1)(a), (b) and (d)]

2.12 The sufficient information required to be obtained, will be determined by the way that the information will be disclosed. This information will include but is not limited to the name of the investment option or disclosable asset.

2.13 The total value of all investments in financial products or other property must be provided *[Schedule 2, item 1, paragraph 1017BB(1)(c)]*. The value of each investment must be reported separately, unless the regulations provide an exemption from this requirement. The regulations may also prescribe that a total value of all investments of a particular kind has to be disclosed, instead of a separate value for each individual investment within that class.

2.14 This regulation-making power is intended to address situations where disclosure of detailed valuations may be commercially sensitive or may disadvantage the fund and its members, such as in the case of investments in directly held property. For such investments the disclosure of detailed price information may either be impossible, due to the inherent difficulty of estimating their value, or may even create a competitive disadvantage, for example in situations where the fund is negotiating to sell the investment. The ability to require disclosure of a total value provides the possibility to prescribe the disclosure of summary information which may be of some value to analysts or members in understanding the holdings of the fund, without disclosing commercially sensitive information *[Schedule 2, item 1, paragraphs 1017BB(1)(c), (d) and (e)]*.

2.15 The disclosure of a fund's portfolio holdings will provide its members with information on where their member contributions are being directed. It is expected that given the detailed nature of the information required to be disclosed, financial analysts will disseminate the information to facilitate increased useability of the disclosed information.

2.16 Importantly, while the RSE must disclose information about an RSE, or an associate of the RSE, as well as investments in a non-associated entity, it does not need to disclose information about the investments of non-associated entities. Associates are defined in the Corporations Act in section 50AAA. The PHD obligations apply to all assets held directly or through associated entities, regardless of the legal structure through which the investments are made.

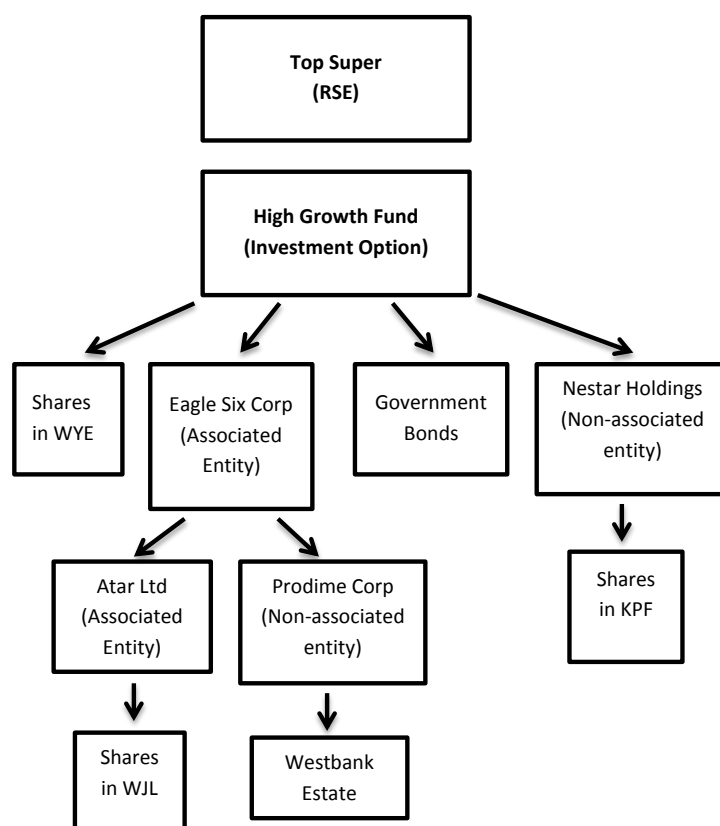
2.17 As required under the existing law the RSE must ensure that the information:

- continues to be made publicly available on the RSE's website until it makes the information pertaining to the next reporting period publicly available (subsection 1017BB(2)); and
- is organised in accordance with the regulations (subsection 1017BB(3)).

Example 2.1

PHD REGIME REQUIREMENTS FOR TOP SUPER'S HIGH GROWTH FUND

Diagram 2.1



Top super has directed \$100 million of its member contributions into its High Growth Fund investment option.

High Growth Fund subsequently directed the \$100 million as follows:

- \$10 million in shares of WYE;
- \$20 million in Government bonds;
- \$50 million in Eagle Six Corp (an associated managed investment scheme); and
- \$20 million in Nestar Holdings (a non-associated managed investment scheme).

Subsequently:

- Eagle Six Corporation directed \$20 million (of the \$50 million) into Atar Limited (an associated entity) and \$30 million into Prodime Corporation (a non-associated entity); and
- Nestar Holdings directed \$20 million into shares in KPF.

Finally:

- Atar Limited directed \$20 million into shares in WJL; and
- Prodime Corporation directed \$30 million into the Westbank Estate commercial property.

PHD regime requirements

The table below sets out the disclosure requirements for the financial products and other property that Top Super has allocated to High Growth Fund.

<i>Financial product/property</i>	<i>Disclosure required?</i>	<i>Reason</i>
Shares in WYE \$10 million	Yes	Top Super directly invested in WYE shares.
Eagle Six Corp MIS \$50 million	Yes	Top Super directly invested in Eagle Six Corporation MIS.
Atar Ltd \$20 million (of the \$50 million invested in Eagle Corp MIS)	Yes	Eagle Six Corp MIS, an associated entity of Top Super directly invested in Atar Ltd.
Shares in WJL \$20 million (of the \$20 million invested in Atar Ltd)	Yes	Atar Ltd, an associated entity of Top Super, directly invested in WJL shares.
Prodime Corp \$30 million (of the \$50 million invested in Eagle Six Corp MIS)	Yes	Eagle Six Corp MIS, an associated entity of Top Super directly invested into Prodime Corp.
Westbank Estate \$30 million (of the \$30 million invested in Prodime Corp)	No	Prodime Corp, a non-associated entity of Top Super, directly invested in Westbank Estate.
Government Bonds 20 million	Yes	Top Super directly invested in Government Bonds.
Nestar Holdings MIS \$20 million	Yes	Top Super invested directly into Nestar Holding MIS (a non-associated entity).
Shares in KPF \$20 million (of the \$20 million invested in Nestar Holdings).	No	Nestar Holdings, a non-associated entity of Top Super, invested directly in KPF shares.

Exemptions from the disclosure requirements

2.18 There are a number of exclusions from the PHD requirements to reduce the compliance burden on RSEs where the benefit of disclosure of investment details for members and their employers is limited. The exemptions cover the following circumstances:

- The RSE is a pooled superannuation trust, single member fund or a small APRA fund. The reason for this exemption is that pooled superannuation trusts have no individual members. The others only have one member or a very small number of members who can obtain information on their fund's portfolio holdings through other means.
 - Pooled superannuation trust has the same meaning as in the SIS Act.
 - Small APRA fund has the same meaning as in prudential standards determined under section 34C of the SIS Act. *[Schedule 2, items 2 and 3, subsections 1017BB(4) and (6)]*
- An RSE's investment option has been closed to new members for at least 5 years (legacy products). This exemption recognises that as these investment options are not able to be accessed by new members, the costs that the requirements impose on superannuation funds, which will ultimately be borne by the members, outweigh any benefits that asset level disclosure may provide. *[Schedule 2, item 2, paragraph 1017BB(5)(a)]*
- Financial products, or other property, that are not a material investment for an investment option. Regulations can be made setting out further details on how this measure is to be applied, if required. This exemption and the related regulation making power are carried over from the existing legislation (subsection 1017BB(4)). *[Schedule 2, item 2, paragraph 1017BB(5)(b)]*
- RSE trustees may determine up to five per cent of the assets attributable to each of their investment options for which they are not required to make information publicly available. In order to qualify for this exemption the prescribed information that would otherwise have to be disclosed about the selected investments must be commercially sensitive and the disclosure of the information must be detrimental to the interests of the members of the fund. This provides RSE trustees with the flexibility to select a limited number of investments which comply with the prescribed criteria for

which the information required under subsection 1017BB(1) does not have to be made publicly available. Examples of where the disclosure of information in relation to an investment would be detrimental to the interests of the members of the fund include situations where:

- the disclosure of the investment would negatively impact the potential return from a particular investment; or
 - an RSE was precluded from making an investment, when the RSE was of the view that the members of the fund would benefit from the making of that investment.
- The types of investments that are likely to fall within this exemption are asset classes such as private equity and venture capital investments. *[Schedule 2, item 2, paragraph 1017BB(5)(c)]*
 - Investments in financial products or other property which are allocated to a defined benefit fund on the basis that their returns are not dependent on the fund's holdings. This provision will also exempt the defined benefit element of a hybrid fund but not the accumulation element, for which the prescribed information will have to be disclosed. This exemption will apply as long as the assets which support the defined benefit element of a hybrid fund can be identified. If that is not possible, or is difficult to achieve, the legislation does not prevent RSEs from voluntarily disclosing PHD information relating to defined benefit funds. *[Schedule 2, item 2, paragraph 1017BB(5)(d)]*
 - Defined benefit fund has the same meaning as in Division 3A of Part 8 of the SIS Act.
 - The RSE is a guaranteed life product as defined in paragraph 1017BA(4A)(a). The benefits provided to members of such products are not dependent on the performance of the underlying investments of the fund. *[Schedule 2, item 2, paragraph 1017BB(5)(e)]*
 - The regulations exempt the kind of investment product held by the fund. This power provides the flexibility to exempt other types of investments for which disclosure of the prescribed information may be of no benefit or detrimental to the interests of the fund and its members. *[Schedule 2, item 2, paragraph 1017BB(5)(f)]*

2.19 Clarification is provided that a choice product with only one investment option is itself considered to be an investment option to which the PHD requirements apply. A MySuper product as defined in the SIS Act is also considered to be such an investment option. *[Schedule 2, item 3, subsection 1017BB(6)]*

2.20 The reporting obligations on parties to contracts and arrangements under which financial products or other property are acquired using the assets, or assets derived from assets, of an RSE will be repealed. These obligations were primarily designed to enable trustees to obtain information from non-associated entities. They are no longer required because the amended PHD obligations only extend to associated entities. *[Schedule 2, item 4, sections 1017BC, 1017BD and 1017BE]*

Consequential amendments

2.21 A number of amendments are required as a consequence of the repeal of the provisions in item 4 above, as follows:

- The reference to repealed subsection 1017BC(3) in paragraph 1020E(1)(c) is deleted. *[Schedule 2, item 5, paragraph 1020E(1)(c)]*
- The reference to repealed section 1017BC in subsection 1020E(11) (paragraph (d) of the definition of defective) is removed. *[Schedule 2, item 6, subsection 1020E(11)]*;
- The offence provision in section 1021NC is removed, as it applies to repealed sections 1017BC, 1017BD and 1017BE. *[Schedule 2, item 7, section 1021NC]*
- Paragraph 1022B(1)(h), including the “or” in subparagraph 1022B(1)(g)(iii), is removed, as it refers to repealed subsection 1017BC(3). *[Schedule 2, items 8 and 9, subparagraph 1022B(1)(g)(iii) and paragraph 1022B(1)(h)]*
- References to repealed section 1021NC in subparagraphs 1041H(3)(a)(iii) and 1041K(1)(a)(iii) are removed. *[Schedule 2, items 10 and 11, subparagraphs 1041H(3)(a)(iii) and 1041K(1)(a)(iii)]*
- The application provision relating to repealed section 1017BC is removed. *[Schedule 2, item 13, section 1541]*
- The table items 308AG, 308AH and 308AI in the list of penalties in Schedule 3 are removed, as they refer to repealed section 1021NC. *[Schedule 2, item 15, Schedule 3 (table items 308AG, 308AH and 308AI)]*

Application and transitional provisions

2.22 The new application date of 31 December 2017 is established for the PHD reporting obligation in subsection 1017BB(1). [*Schedule 2, item 12, section 1540*]

2.23 New Part 10.22A, containing new section 1541A, is inserted to provide the location for the transitional provisions relating to the *Superannuation Legislation Amendment (Transparency Measures) Act 2016*. The amendments made by this Act will apply from the reporting day that is 31 December 2017. [*Schedule 2, item 14, section 1541A*]

Chapter 3

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Superannuation Legislation Amendment (Transparency Measures) Bill 2016

3.1 This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

3.2 This Bill aims to increase the quality of information available to superannuation fund members and employers by requiring the publication of choice product dashboards and portfolio holdings disclosure.

3.3 The Corporations Act requires trustees of certain superannuation funds to publish on the fund's website a product dashboard. The dashboard provides a summary of information for consumers about each of a fund's MySuper and choice products. Information is provided regarding important factors such as historical and targeted returns, risk and fees. Product dashboards are intended to assist members to more easily compare investment options.

3.4 The dashboard requirements are already in operation for MySuper products. It is now proposed to extend the requirement so that a trustee of a regulated superannuation fund with five or more members has to produce a choice product dashboard for the fund's 10 largest choice investment options, as measured by funds under management. A power will be provided to prescribe by regulation how the dashboard must be displayed on the fund's website, and how information on the dashboard is to be set out.

3.5 Under the current law trustees of a superannuation fund must publish their fund's portfolio holdings on the fund's website twice a year. The information must be sufficient to identify each financial product or

other property, and the value of the investment in each financial product or property.

3.6 The portfolio holdings disclosure requirement has not commenced to date. The new law amends and implements the existing portfolio holdings disclosure obligations. The main change is that the fund must publish, for each of its investment options, information about the nature and value of financial products or other property that the fund, or an associated entity of the fund, has directly invested in. The obligation to include information about financial products or other property that non associated entities have directly invested in will be repealed.

Human rights implications

3.7 This Bill does not engage any of the applicable rights or freedoms.

Conclusion

3.8 This Bill is compatible with human rights as it does not raise any human rights issues.

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