9 August 2016

Ged Fitzpatrick
Senior Executive Leader, Investment Managers and Superannuation
Australian Securities & Investments Commission
100 Market Street
Sydney NSW 2000

Dear Ged,

Superannuation Fund Disclosure Section 7.9.37 of Corporations Regulations

The Actuaries Institute has for many years been significantly involved in the development of superannuation legislation. In the last few years we have, in particular, had considerable correspondence and discussions with ASIC, APRA and Treasury regarding the disclosure by superannuation funds of their investment performance, fees and other relevant matters. Such disclosure is important to aid understanding by members and potential members of superannuation funds as well as to assist with fair comparisons between superannuation funds. These discussions have related to matters such as the design of dashboards, product disclosure documents (PDS's) and annual reports to members.

In the Government's response to the Financial System Inquiry on 20 October 2015 the Assistant Treasurer said:

"We obviously agree with the inquiry that superannuation needs to be competitive, it needs to be efficient and overall it needs to be transparent. We need to be able to deliver the best possible outcomes for those people who are contributing to their retirement and having an efficient, competitive and transparent system will do just that."

In our previous correspondence and discussions we have consistently noted the importance of three provisions of the Corporations Regulations which require funds to produce specific, useful and sound information for their members and potential members.

We believe full and consistent compliance with these provisions is required to ensure that the information provided to members will promote an efficient, competitive and transparent superannuation system. However, we have observed that funds interpret these provisions in widely different ways which could result in invalid or misleading comparisons or understanding of fund provisions. Clearly, the variation in interpretation ensures that the superannuation system in this area is not transparent and therefore, the government's stated objectives are not achieved.

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If these inconsistencies were addressed then we believe that more prominent and, most importantly, consistent disclosure in accordance with these three provisions would improve the ability of members to compare funds. It might also lessen or remove the current preference for transfers to ORFR's to be treated as fees and costs – reasons supporting the separation of ORFR transfers (and other reserve transfer) from fees and cost disclosure were set out on page 3 of our letter to Treasury of 20 December 2013 (copy enclosed).

The three provisions of the Corporations Regulations are:

Sub-regulation 7.9.37 (k)

This requires that a superannuation fund disclose details of movements in reserves during recent reporting periods that, in total, constitute at least 3 years.

Sub-regulation 7.9.37 (l)

This requires that the fund disclose the manner in which allotments to members' accounts have been determined.

Sub-regulation 7.9.37 (m)

This requires that the fund disclose the trustee's management strategy in relation to reserves.

An unfortunate consequence of the wide variation in interpretation of these sub-regulations is that consumers currently receive confusing and inconsistent information and this compromises the ability to make valid comparisons between funds. Variations in what is treated as a reserve, or variations in reported movements, can have a significant effect on the disclosure of investment performance and (in some cases) fees and costs. Also, while ongoing fees and costs may not vary significantly from year-to-year, movements in reserves can sometimes change significantly from year-to-year (for example when reserve strategies are changed).

Consistent interpretation of the requirements is therefore important to the usefulness and integrity of matters like dashboards, PDS's and other reporting requirements. Non-compliance or inconsistent interpretation can negate much of the value of these developments.

Appendix 1 to this letter contains relevant extracts from the Annual Reports of five large defined contribution plans. Appendix 2 to this letter explains how the plans were chosen and comments on our interpretation of each fund's compliance with the three sub-regulations of Section 7.9.37.

Of course, ASIC may wish to undertake its own research regarding how funds currently comply with the sub-regulations. We believe that the need for further educational and detailed guidance on this matter to improve compliance and consistent application of these regulations would then become readily apparent.

It remains our firm view that trustees should be alerted to their responsibilities under Corporations Regulations 7.9.37 (k), (l) and (m) and that ASIC should offer more guidance about this matter to improve the consistency in reporting across funds.

On 24 November 2015, ASIC published an updated version of Regulatory Guide 97 which, in our view, does not directly address or resolve the concerns we express in this letter. We note that RG97.221 states (under the heading "Transfers **from** Reserves") that "any movements of reserves must be reported in the annual report to the holders of the superannuation product in accordance with reg 7.9.37 (1)(k). This is the case regardless of whether the reserve is for financing operational risks or smoothing investment returns." This is a welcome start to some much needed further guidance but (given the heading) could be mis-read as only applying to transfers **from** reserves. It is also limited just to annual reports and makes no mention of regulations 7.9.37 (1)(l) and 7.9.37 (1)(m).

The Institute would welcome the opportunity to discuss this issue in further detail and, if required, to assist in drafting further guidance on this matter. Please do not hesitate to contact the Chief Executive Officer of the Actuaries Institute, David Bell) to discuss any aspect of this submission.

Yours sincerely,

Lindsay Smartt
President

cc **Maan Beydoun**
Senior Specialist, Investment Managers and Superannuation
Australian Securities & Investments Commission

Helen Rowell
APRA Deputy Chair
Australian Prudential Regulation Authority

Glen McCrea
ASFA Acting Chief Executive Officer
Association of Superannuation Funds of Australia

APPENDIX 1

Extracts from Annual Reports of Five

Large Defined Contribution Plans

Plan A	A very large Industry Fund
Plan B	A large Industry Fund
Plan C	A Retail Master Fund
Plan D	A "Personal" Retail Fund
Plan E	A smaller Industry Fund

Plan A

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Superannuation Investment Performance to 30 June 2015

Plan A declares a return for each investment option on a daily basis. The crediting rate declared can be positive or negative depending on investment performance.

The amount allocated to member accounts is the crediting rate earned during the period that the account was invested in the investment option(s). The crediting rate is net of any investment management fees, expenses and other provisions, such as tax.

Investment returns from relevant investment option(s) are applied to members' accounts effective 30 June each year or earlier if a member balance is moved between investment options, or when a member leaves Plan A.

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Investments and Investment Managers

	Sector	Value $'000
...		
Macquarie Specialist Asset Management Limited	Property	941
QIC Property Funds Pty Ltd	Property	1,684,974
Russell Real Estate Advisors Inc.	Property	30,935
Trinity Land Equity Trust	Property	34
Plan A Internal Investments	Reserves	337,089

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Plan A movement in members' funds for the year ended 30 June 2015

	2015 – $'000	2014 – $'000
...		
Net assets available to pay benefits at year end	**91,770,314**	**78,275,860**
Members' funds	91,340,582	77,991,007
Reserves	429,732	284,853
Liability for accrued benefits	**91,770,314**	**78,275,860**

Reserves for the three years to 30 June 2015

	2015 – $'000	2014 – $'000	2013 – $'000
Reserves	429,732	$284,853	$168,806

More information about the Plan A's reserves

The level of the reserves is determined by the Board annually based on an assessment of the risks faced by Plan A and with regard to industry best practice.

Our policy sets out how the level of the reserves is maintained and replenished through both investment earnings and operational surplus. It also outlines under what circumstances payments are made from the reserves.

Included in the reserves is an amount set aside as an Operational Risk Financial Reserve of $234m ($190m in 2014). The purpose of the Operational Risk Financial Reserve is to provide funding for incidents where material losses may arise from operational risks (as opposed to investment risks).

Plan B

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PLAN B performance results to 30 June 2015 *

...

PLAN B's calculation of returns

Returns in the above tables and references to returns in this report are net of investment fees and tax, except in the case of PLAN B Pension option which are untaxed. Investment returns are at the investment option level and are reflected in the unit prices for these options. They are not the returns of members' individual accounts. Returns for the three, five and 10 year periods are annualised returns.

*Returns are net of investment fees and tax, except the PLAN B Pension options which are untaxed. Investment returns are at the investment option level and are reflected in the unit prices for these options. The net investment returns are allocated to your account based on the number of units of the investment option that you are invested in.

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Core Strategy

...

PLAN B/Acumen+

...

+The Core Strategy's Returns are based on unit pricing from 1 January 2013 onwards. Prior to that a crediting rate was used.

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Reserves

PLAN B has a number of reserves, including an operational risk financial requirement reserve, capital reserve and administration reserve. As at 30 June 2015 the total reserves were valued at $215.8 million.

These reserves are maintained and used in accordance with PLAN B's Reserving policy, such as to meet any contingencies and provide for future capital requirements, or insurance and administration payments. The purpose of maintaining these reserves is to spread potential costs among different generations of members. The Trustee manages Fund reserves closely to ensure that reserves are not too high as well as not too low. The Trustee does not use reserves to smooth investment returns to members. The Trustee will ensure there is proper identification of the reserves in the accounts of the Fund so as to enable reporting to the trustee and to APRA as required. PLAN B currently has adequate provisions in its reserves.

Movements in PLAN B's reserves

Year	$million
2013	(20.3)
2014	65.2
2015	14.4

Plan C

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Operational Risk Financial Reserve (Reserve)

The Government requires super funds to keep a financial Reserve to cover any losses that members incur due to a breakdown in operations. The reserve has been partially funded with the remaining funding to be established by [Bank]. However, we may require members to contribute to the Reserve in the future. We'll notify you in advance of any deductions.

Operational Risk Financial Reserve investment strategy

Option	Proportion
[Life Office] Horizon 4 Balanced Portfolio	100%

The balance of the Reserve at the end of the last two financial years is summarised below:

Year ended 30 June	Plan Reserve ($)
2015	$22,625,406.60
2014	NA

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About your account value

When money is paid into your account, units are allocated to your account and when money is paid out, units are deducted from your account.
The value of your account is based on:
- the number of units in your chosen investment options, and
- the price of those units.

The overall value of your account will change according to the unit price and the number of units you hold.
Unit prices are calculated as at the end of each business day and robust unit pricing policies are used to do this.
The unit price will reflect the performance of the underlying assets, income earned, fees, expenses and taxes paid and payable.
The performance of the underlying assets is influenced by movements in investment markets such as local and overseas share markets, bond and property markets.
If you would like to find out more about our unit pricing philosophy, go to [Life Office]. com.au.

Plan D (Fund, 2015)

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Please note that the Fund information for the 2014-2015 reporting period is contained in:

- the 2015 Annual Report for the Plan D Superannuation Fund; and
- the Plan Annual Report for the year ended 30 June 2015.

You should read both documents together.

[*The Plan Annual Reports for the years ended 30 June 2014 and 2015 are not on the web so the Plan Annual Report for the year ended 30 June 2013 has been referred to on the next page*]

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Operational risk reserve (ORR)

We are required to keep a financial reserve to cover any losses that members incur due to a breakdown in operations.

In order to maintain the reserve, an Operational risk reserve cost of up to 0.05% % pa of your account balance may be charged in any year.

The ORR is invested in the investment option shown below.

Operational risk reserve investment strategy

Option	Proportion (%)
Pre-mixed Moderate	100 %

The balance of the ORR at the end of the last three financial years is summarised below:

Year ended 30 June	Fund reserve ($)
2015	10,596,817
2014	3,131,491
2013	n.a.

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Statements of net assets at 30 June

	2015 ($'000)	2014 ($'000)
Net assets available to pay benefits and reserves	**17,511,157**	**16,320,916**
Represented by:		
Net assets available to pay benefits	17,492,626	16,309,346
Operational reserves	11,628	4,173
Self-insurance reserve	6,903	7,397
Net assets available to pay benefits and reserves	**17,511,157**	**16,320,916**

Plan D (Sub plan, 2013)

PAGE 4

Plan Benefits and allocation of earnings

As a member of the Personal Plan you are provided with an accumulation type superannuation benefit. This means your benefit is the accumulation (with investment earnings) of employer contributions, contributions you make, transfers and rollovers, less fees, insurance premiums and taxes (where applicable). Investment earnings (which may be positive or negative) are reflected daily in the unit price of your investment option(s) (so the price goes up with positive investment earnings and goes down if there are investment losses).

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Statements of changes in net assets for the financial year ended 30 June 2013

	1 July 2012 to 30 June 2013 ($'000)	1 July 2011 to 30 June 2012 ($'000)
...		
Change in net assets attributable to members of the fund	**2,096,189**	**166,392**
Change in net assets attributable to reserves	**-**	**84**
Net assets available to pay benefits and reserve at the beginning of the year	**10,548,740**	**10,382,264**
Net assets available to pay benefits and reserve at the end of the year	**12,644,929**	**10,548,740**

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Statements of net assets at 30 June 2013

	1 July 2012 to 30 June 2013 ($'000)	1 July 2011 to 30 June 2012 ($'000)
...		
Net assets available to pay benefits and reserve	**12,644,929**	**10,548,740**
Represented by:		
Net assets available to pay benefits	12,643,897	10,547,708
Reserve	1,032	1,032
Net assets available to pay benefits and reserve	**12,644,929**	**10,548,740**

Plan E

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Unit pricing

Plan E uses unit prices to calculate and report members' superannuation balances and apply investment returns in relation to investments in a Managed or Asset Class option. Every Plan E member's account balance information includes the number of units they own, as well as the latest sell price. A buy price is usually the price applied when contributions are made into an investment option, at which time a member's account will be allocated units at the buy price. A sell price is usually applied when money is withdrawn from an investment option, including withdrawals from accounts for investment switches and payments, insurance premiums and tax deducted directly from an account. The sell price is used to calculate account balances. To find out additional details about buy-sell spreads and how unit prices are calculated, please see the **Member Guide PDS and Investment Guide** available at **Plan E.com.au/PDS,** or read the **Pension Guide at Plan E.com.au/PensionGuide.**

Investment strategy - reserves

Plan E maintains reserves designed to provide for known and potential commitments and contingencies. The Fund maintains two reserve accounts as follows:

- General Reserve, and
- Operational Risk Reserve

Reserve Management

The General Reserve is maintained as a percentage of net assets (currently 0.40% of net assets) and is reflective of the size of funds under management, the demographics of the member base and the perceived financial market conditions and liquidity risks, The Operational Risk Reserve (ORR) is maintained to provide for risks reflective of the size, complexity and business of the Fund. On a quarterly basis the ORR is formally reviewed as a percentage of net assets (currently 0.30% of net assets).

The reserves are invested in a strategy (appropriate to the time frame and risk profile) which is reviewed annually by the Board. Each strategy is invested in existing asset classes held by the Fund and are maintained by the Fund's custodian.

Plan E's reserves over the last three years		% of fund net assets
2014/15	$94,919,144	0.92%
2013/14	$76,510,177	0.85%
2012/13	$70,228,001	0.91%

APPENDIX 2

Explanation and Comments

Selection of Plans

From a list of the 20 largest MySuper products by value of assets, we choose 5 of the 20 so as to include a very large Industry plan, a large Industry plan, a smaller Industry plan and two Retail plans (one Employer-based and one Personal-based). The five plans were selected without any prior knowledge of what their Annual Reports contained, or did not contain, about the three sub-regulations of Section 7.9.37 of the Corporations Regulations.

The Annual Reports were obtained from Fund websites.

No account was taken of information which might be available in Fund PDS's, Fact Sheets, Member Statements, Audited Financial Reports or other Fund publications.

General Comments

The information presented about the three sub-regulations of Section 7.9.37 of the Corporations Regulations varied enormously as to style, depth of content and terminology.

Only one of the five plans disclosed all the information about sub-regulations (k), (l) and (m) on the one page (on page 44 of a 52 page Annual Report). For the other four plans the information was on different pages of the Report and often many pages apart.

We doubt whether any of the five funds fully disclosed all of the information envisaged by the three sub-regulations. **But it is impossible for us to have confidence about this, because there has been very little guidance from the Regulator about this matter.** For example we note that sub-regulation (m) seems to permit a very high level description of the management strategy. We do not know if this is intentional.

Only one plan (Plan E) disclosed information about reserves expressed as both dollar amounts and as percentages of net assets. Though the latter is not a specific requirement of either of the two sub-regulations relating to reserves, we consider this type of disclosure is helpful for members because it indicates the relative amount of reserves (and movements) and aids comparisons between funds.

A key issue is that sub-regulation (k) of Section 7.9.37 requires (appropriately in our view) "details of movements in reserves". We have assumed that this is more than "details of reserves" and more than "movements in reserves". A particular area where greater guidance would be helpful is some examples or suggestions about what "details" are envisaged. We have assumed that it might be details of each reserve and some information about the cause or reason for disclosed movements. In particular, is the disclosed movement solely or partly due to investment earnings on reserves.

Sub-regulation (k) of Section 7.9.37 requires "details of movements in reserves during recent reporting periods that, in total, constitute at least 3 years". However only one of the five plans quantified the movements in reserves. Three plans just showed reserves at the end of the three most recent financial years. Showing figures at the end of 3 financial years only allows the user to calculate the net change over a period of two years, not three. (The fifth plan established reserves for the first time during the year ending 30 June 2015 so it omitted reference to movements in reserves.)

In the following, the sub-regulations (k), (l) and (m) of Section 7.9.37 are identified as "(k)", "(l)" and "(m)".

Specific Comments

Plan A

(k) The combined amount of the reserves at the end of each of the last three financial years is disclosed but not the amount of each reserve except for the amount of the Operational Risk Financial Reserve. This enables a user to determine the **total** net movement in reserves over the last **two** years, but no detail of the cause and amount of each movement.

The legislation requires details of movements in reserves over at least 3 years. We consider this requires that each reserve should, subject perhaps to materiality, be covered separately. We also note that showing figures at the end of 3 financial years only allows the user to calculate the net change over a period of two years, not three.

(l) The legislation requires disclosure of the manner in which allotment to member accounts has been determined. For this Fund, reserves are deducted from the total asset value and only the balance is allocated to member accounts. Accordingly there is no allocation of reserves to individual accounts. While the fund therefore complies with the manner of the allotment it might be an improvement if the report stated that reserves are deducted before the allocation of assets between individual accounts.

(m) The third legislative requirement is that the trustees set out their management strategy in relation to reserves. The fund states that its "policy" sets out how the level of reserves is maintained and replenished and under what circumstances payments are made from reserves. But there is no indication as to whether the policy is available to members and others on a website or otherwise. We have not therefore been able to take this policy into account in our comments.

Plan B

(k) It is explained that the fund has a number of reserves including an "operational risk financial requirement reserve", a capital reserve and an administration reserve. The movement in the combined amount of the three reserves is disclosed as dollar amounts but without information about each type of reserve.

(l) Disclosed as a footnote note in very fine print.

(m) Disclosed.

Plan C

(k) The amount of the Operational Risk Financial Reserve (ORFR) for each of the two years of the Fund's existence is disclosed but not detail of the cause and amount of each movement. It is explained that the "reserve has been partially funded with the remaining funding to be established by [the Bank]".

(l) Disclosed.

(m) Disclosed but at a very broad level. It is explained that "we may require members to contribute to the Reserve in the future. We'll notify you in advance of any deductions."

Plan D (Fund, 2015)

(k) The Fund includes a number of plans or sub-plans, each with its own annual report. We would expect that further detail regarding reserves would be provided in the annual report of those "plans" to which they belong.

The amount (or "balance") of the Operational Risk Financial Reserve (ORR) at the end of each of the last three years of the Fund's existence is disclosed but not detail of the cause and amount of movements. It is explained that "an Operational risk reserve cost of up to .05% pa of your account balance may be charged in any one year." The amount of a "Self-insurance reserve" is disclosed at the end of each of the last two years but with no further explanation (although this may be disclosed in the relevant sub-plan reports).

(l) Not disclosed in this report.

(m) Disclosed but at a very broad level. No information is disclosed about the management strategy of the "Self-insurance reserve" – we would expect this to be disclosed in the relevant sub-plan reports.

Plan D (Sub plan, 2013)

The sub plan report for 2015 was not available on the Fund website.

(k) A "change in net assets attributed to reserves" is disclosed as dollar amounts for each of the past two years. On the next page of the report a "Reserve" of $1,032,000 is disclosed at 30 June 2013 and 30 June 2012 but there is no further information or explanation about the sub plan's reserves.

(l) Disclosed but exact meaning of "reflected daily in the unit value of your investment options" is unclear.

(m) Not disclosed in this report.

Plan E

(k) The combined amount of the two reserves at the end of each of the past three years is disclosed as dollar amounts and as a % of net assets but without further information about movements in reserves.

(l) Disclosed

(m) Disclosed for both the General Reserve and the Operational Risk Reserve but each at a very broad level.