



Summary of feedback to CS 39 and ASIC's response

In Simple Consultation 39 *Proposed changes to stamp duty disclosure arrangements* ([CS 39](#)), we sought feedback on our proposal to require stamp duty to be disclosed in Fees and Costs Summaries as an average amount over seven years. This proposal will be implemented through amendments to [ASIC Corporations \(Disclosure of Fees and Costs\) Instrument 2019/1070](#).

The proposal is intended to address concerns that stamp duty is a large, irregular cost which may misrepresent the actual volatility of a fund's fees and costs structure, distorting consumer decision-making and funds' investment decisions, especially when viewed through particular comparative tools.

In addition to the proposed changes, ASIC announced it would bring forward a full review of Regulatory Guide 97 *Disclosing fees and costs in PDSs and periodic statements* ([RG 97](#)) that was scheduled for 2029 to instead commence in financial year 2026–27.

We received one confidential and 13 non-confidential submissions. Feedback was varied, with approximately half of the stakeholders expressing support for the proposal, while remaining stakeholders recommended that no changes be made ahead of ASIC's planned broader review of RG 97.

Based on overall feedback received, we have decided to make some amendments to the final instrument to address technical issues raised. We are proceeding with making the changes to stamp duty disclosure ahead of the broader RG 97 review to address in a timely manner the accepted concerns about distortion and the large, irregular nature of stamp duty.

We have summarised key feedback on the stamp duty proposal: see the table on the following pages. This document is not intended to be a comprehensive summary of all feedback.

Note: non-confidential submissions are published on the landing page for [CS 39](#).

Feedback	ASIC's response
<p>Several respondents recommended that ASIC make no changes to stamp duty disclosure settings ahead of the broader review of RG 97, to avoid confusion, repeated system changes, and unnecessary compliance costs.</p>	<p>ASIC acknowledges that several stakeholders preferred that no changes be made ahead of the broader review of RG 97. However, given the immediate concerns associated with stamp duty as a large and irregular cost that may misrepresent the true volatility of a fund's fees and costs, and its potential to influence consumer decision making as well as trustees' investment decisions, ASIC considers it appropriate to implement this measure ahead of the broader review.</p> <p>Addressing the issue now will improve the clarity and stability of stamp duty disclosure.</p>
<p>Two respondents sought clear, structured transitional arrangements:</p> <ul style="list-style-type: none"> • One sought a deferred mandatory commencement of 24 months, with optional early opt-in. • The other sought general transitional relief to accommodate system and process updates. 	<p>ASIC acknowledges respondents' requests for a deferred mandatory commencement period and for general transitional relief to support system and process changes.</p> <p>The new approach to stamp duty disclosure will apply from 1 July 2026 (not from the date the amending instrument is registered).</p>
<p>One respondent noted that ASIC should confirm that adopting a revised averaging method (e.g. seven-year smoothing) does not trigger a significant event notice requirement under s1017B of the <i>Corporations Act 2001</i> (Corporations Act).</p>	<p>For the avoidance of doubt, we have provided a limited exemption from the requirement to issue a significant event notice in relation to changes made to comply with the new approach to calculating stamp duty costs. This approach is consistent with that taken for previous transitional arrangements in RG 97.</p>

Feedback	ASIC's response
<p>One respondent suggested that any proposed changes to Product Disclosure Statement (PDS) disclosure should also apply to periodic statements. This reflects the concern that amendments limited to PDSs would not affect amounts reported to the Australian Prudential Regulation Authority (APRA) for the purposes of the performance test, which are based on fees and costs disclosed in periodic statements under Superannuation Reporting Standard 332.0 (PDF 400 KB).</p>	<p>Feedback provided to ASIC in targeted industry consultation indicated that the current policy settings are not causing issues in relation to net returns or the legislated performance test administered by APRA. The investment return metric in the performance test takes the return on each asset class net of fees and costs for each quarter, annualised over 7 –10 years. The impact of stamp duty is consequently already largely smoothed for the purposes of the performance test under the current settings.</p> <p>The policy intention of the proposed changes is that these should not affect the performance test results.</p> <p>Rather, the purpose of the proposed changes is to address the concern that stamp duty is a large, irregular cost which may misrepresent the actual volatility of a fund's fees and costs structure, distorting consumer decision-making and funds' investment decisions, especially when viewed through comparative tools such as the ATO YourSuper comparison tool. For this reason, the proposed changes will be applied to PDSs only, and not to periodic statements as there is no distortion to address in relation to periodic statements.</p>
<p>A few respondents raised a concern that using a rolling historical average (with differing treatment depending on how long a product has been offered) may disadvantage newer products by inflating reported costs in early years. Some respondents proposed replacing it with a straight-line allocation of stamp duty over a set period.</p>	<p>ASIC acknowledges this feedback. In response, we have changed the averaging methodology to instead be a forward-looking, straight-line allocation over seven years.</p>
<p>Respondents sought additional ASIC guidance, including on transitional arrangements and granular application examples.</p>	<p>ASIC does not propose amending RG 97 to provide further detailed guidance on stamp duty disclosure. The amendment to ASIC Instrument 2019/1070 and its explanatory materials provide sufficient information for implementation. Including granular details on what is a minor element of the overall disclosure settings risks over-complicating RG 97. As noted in ASIC's response to feedback on transitional arrangements above, the new approach to stamp duty disclosure will apply from 1 July 2026.</p> <p>ASIC is bringing forward a full review of RG 97 from 2029 to commence in financial year 2026-27. The issue of whether the guidance needs additional detail can be considered holistically in that review.</p>

Feedback	ASIC's response
<p>If smoothing is adopted, respondents recommended prescribing one smoothing period and aligning it with unit pricing principles (Regulatory Guide 94 <i>Unit pricing: Guide to good practice</i> (RG 94)) to ensure consistency across product reporting.</p>	<p>Part 4.2 of RG 94 provides high-level guidance on the determination of transaction costs. The wording of Part 4.2 of RG 94 is suitably flexible to accommodate ASIC's changes to ASIC Instrument 2019/1070. ASIC does not propose to include additional guidance on stamp duty in RG 94, as this will risk making it more complex without reason.</p>
<p>A respondent suggested we reconsider the proposal to require an explanation of how stamp duty has been calculated in the Additional Explanation of Fees and Costs, noting that this may add complexity without consumer benefit and that stamp duty is not required to be disclosed as a separate line item in the Fees and Costs Summary.</p>	<p>We acknowledge this feedback. However, we consider that the disclosure of how stamp duty costs have been calculated is important for transparency, given that stamp duty will be calculated differently from other transaction costs.</p>
<p>One respondent requested confirmation that the requirement to explain how stamp duty has been calculated in the Additional Explanation of Fees and Costs can be satisfied at a product level, rather than at an individual investment option level where the methodology is uniform. The respondent reasoned this would avoid undue length while maintaining clarity.</p>	<p>This requirement can be satisfied at a product level if stamp duty is calculated the same way for all investment options. If the calculation differs between investment options, the disclosure should show those differences.</p>
<p>Some respondents supported the seven-year smoothing period presented in CS 39. However, some respondents suggested alternative smoothing periods:</p> <ul style="list-style-type: none"> • Five-year period to align with performance fee averaging under RG 97. • 10-year period for enhanced smoothing over longer asset cycles. 	<p>Having regard to the diverse feedback on this issue, ASIC has decided to proceed with a smoothing period of seven years. We consider that this approach will facilitate the smoothing of stamp duty reporting and reflect the longer-term nature of property and infrastructure investments, while maintaining appropriate recognition of stamp duty costs.</p>
<p>A respondent requested that ASIC clarify whether stamp duty costs should be calculated using dollar values or percentage values prior to being averaged.</p>	<p>The dollar value of stamp duty costs should be used to calculate transaction costs.</p>

Feedback	ASIC's response
<p>Several respondents submitted that treating stamp duty as a transaction cost discourages superannuation funds from investing in domestic property. Reasons given for this include that the requirement to disclose stamp duty on direct property investments makes those investments appear less competitive compared with foreign property investments or indirect property investments such as Real Estate Investment Trusts, which do not incur stamp duty or for which transaction costs are disclosed differently.</p> <p>However, one respondent submitted that there is little evidence stamp duty or its treatment under RG 97 is discouraging funds from investing in domestic property.</p>	<p>We appreciate there are diverse views on whether stamp duty should be disclosed and how. ASIC's role is not to encourage investment in one asset class over another. Rather, we have a role in setting fees and costs disclosure rules that are aligned with the legislated objective of superannuation and our legislated mandate to enable confident and informed (through transparency) consumer participation in markets and investments. Our proposal is aimed at addressing unintended consequences without compromising essential disclosure for consumers.</p> <p>We will bring forward our broader review of ASIC Instrument 2019/1070 and RG 97. Instead of in 2029, the review will commence soon, in the 2026–27 financial year. The purpose of the review will be to ensure the disclosure rules and guidance remain robust and relevant for industry and Australian consumers. We will consider issues such as differential treatment that may occur between direct and indirect property investments as part of this review.</p>
<p>Many respondents submitted that stamp duty is a significant and irregular expense that can misrepresent a fund's cost structure and may lead members to make incorrect conclusions about value for money. Some of these respondents supported our proposal to smooth the reporting of stamp duty over seven years, at least as an interim measure.</p>	<p>We consider that smoothing the disclosure of stamp duty by requiring it to be reported as an average amount over seven years is an appropriate measure to address concerns that stamp duty is a large, irregular cost which may misrepresent the actual volatility of a fund's fees and costs structure, distorting consumer decision-making and funds' investment decisions.</p>

Feedback	ASIC's response
<p>Several respondents submitted that stamp duty is different to other transaction costs because it is a tax, which portfolio managers cannot reduce by efficient portfolio management.</p> <p>Most of these respondents submitted that stamp duty should not be included in the calculation of transaction costs at all and instead should be reclassified as an excluded transaction cost.</p> <p>Other respondents submitted that stamp duty is a genuine and relevant cost that is incurred in the acquisition of property that should continue to be disclosed as a transaction cost to avoid reducing transparency and product comparability. One respondent submitted that funds can influence the amount of stamp duty they pay because they are only required to pay it when they acquire dutiable property in jurisdictions that impose stamp duty. This respondent submitted that excluding stamp duty would understate the cost of the fund's investment strategy, which is borne by members. These respondents supported our proposal to maintain stamp duty as a transaction cost but smooth its reporting over a specified period.</p>	<p>We understand that there are different perspectives on whether stamp duty should be removed as a transaction cost. In addition to stamp duty, there is a range of other fees and costs that stakeholders have asked ASIC to reconsider. Given the broad coverage of ASIC Instrument 2019/1070 and RG 97, careful consideration needs to be given to making changes in response to discrete issues. We believe that a broader review would be necessary to assess whether any costs should be excluded as a transaction cost, including consideration of any impacts on competition and transparency.</p>
<p>Alternatively, some respondents submitted that stamp duty should continue to be disclosed but should be reclassified as a statutory tax or as incidental costs rather than an ordinary transaction cost. One respondent submitted that stamp duty costs could be disclosed in the Additional Information section of the fees and costs section of a PDS instead of the transaction costs calculation.</p>	<p>We have brought forward our review of ASIC Instrument 2019/1070 and RG 97. Instead of in 2029, the review will commence soon, in the 2026–27 financial year. The purpose of the review is to ensure the disclosure rules and guidance remain robust and relevant for industry and Australian consumers. Through this process, we can assess in a comprehensive manner whether any costs should be reclassified.</p>