



ASIC
Australian Securities &
Investments Commission

REPORT 637

Response to submissions on CP 308 Review of Regulatory Guide 97

November 2019

About this report

This report highlights the key issues that arose out of the submissions received on [Consultation Paper 308](#) *Review of RG 97 Disclosing fees and costs in PDSs and periodic statements* (CP 308) and details our responses to those issues.

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- describing the principles underlying ASIC's approach
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Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

This report does not contain ASIC policy. Please see [Regulatory Guide 97 Disclosing fees and costs in PDSs and periodic statements](#) (RG 97). A transitional period applies. The transitional version of RG 97 (released March 2017) can be downloaded from the [RG 97](#) landing page on ASIC's website.

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A Overview

Key points

A consistent and transparent approach to fees and costs disclosure for superannuation and managed investment products can help create better financial markets and better outcomes for consumers. It does this by:

- keeping issuers accountable; and
- helping consumers make better decisions.

Financial advisers and other market professionals can also use this disclosure to inform their analysis and benchmarking of the market. They can then give consumers better advice about whether to acquire or retain a product. This will enhance competition.

This report:

- provides an overview of the process that we undertook to develop the proposed new fees and costs disclosure requirements in [Consultation Paper 308 Review of RG 97 Disclosing fees and costs in PDSs and periodic statements \(CP 308\)](#), as well as the consumer testing of the proposed new requirements; and
- highlights the key issues, and our responses to those issues, that arose out of the submissions received on CP 308, the consumer testing, and our limited further stakeholder consultation.

We have implemented most of the proposals in CP 308 and have:

- updated and reissued [Regulatory Guide 97 Disclosing fees and costs in PDSs and periodic statements \(RG 97\)](#); and
- made [ASIC Corporations \(Disclosure of Fees and Costs\) Instrument 2019/1070](#).

A transitional period applies to the new fees and costs disclosure requirements: see paragraphs 28–33.

External expert review and our subsequent proposals in CP 308

- 1 In [CP 308](#), we consulted on our proposals to make changes to the fees and costs disclosure requirements for superannuation products and managed investment products to improve fees and costs disclosure. Our proposed changes were set out in:
 - (a) draft updated *Regulatory Guide 97 Disclosing fees and costs in PDSs and periodic statements* (draft updated RG 97), at Attachment 1 to CP 308; and
 - (b) draft amendments to Sch 10 to the Corporations Regulations 2001 (draft amendments to Sch 10), at Attachment 2 to CP 308.

2 We developed our proposals in response to the recommendations of Darren McShane’s external expert review of the fees and costs disclosure requirements: see [Report 581](#) *Review of ASIC Regulatory Guide 97: Disclosing fees and costs in PDSs and periodic statements* (REP 581).

Note: CP 308 also sought feedback on some additional proposals about the fees and costs disclosure requirements that were not considered in REP 581.

3 Released in July 2018, REP 581 contained a comprehensive analysis of the fees and costs issues arising under the Australian regulatory framework. Mr McShane concluded that fees and costs matter—particularly in long-term savings vehicles where the effect of fees and costs compound and can have a substantial impact on consumer outcomes over time. Mr McShane expressed the view that the primary objective of fees and costs disclosure is to provide consumers with accurate and usable information about cost impacts to facilitate fair competition and product comparison, and to support better consumer decision making: see REP 581 at pages 7 and 22.

4 Mr McShane went on to express the view that, as a secondary objective, fees and costs disclosure also:

- (a) keeps issuers accountable and transparent; and
- (b) provides useful data and information about fund operations for competitors and intermediaries to support benchmarking, analysis and policy development.

5 Although disclosure alone is not sufficient to drive good consumer outcomes, and is not a complete solution to overcome complexity in financial services, effective disclosure contributes to better financial markets and better outcomes for consumers: see REP 581 at pages 7 and 28–9.

6 Mr McShane concluded that changes to the fees and costs disclosure requirements would be advantageous. He made 34 recommendations and observations.

7 This external review involved significant industry consultation with more than 120 stakeholders, including industry bodies, research houses, industry advisers, service providers, and issuers of superannuation products and managed investment products. For the list of stakeholders consulted, see Appendix 1 of REP 581.

8 Mr McShane noted that while consumer testing was not possible as part of the external review, ASIC might use consumer testing to consider and implement his recommendations. He recommended we consumer test the amended versions of the ‘Fees and costs templates’ in Diagram 6-1 (for superannuation products) and Diagram 6-2 (for managed investment products): see REP 581 at pages 11, 20 and 100 and [CP 308](#) at page 44.

Consumer testing of our proposals in CP 308

- 9 During the consultation period, we commissioned Susan Bell Research to conduct consumer testing of the proposed fees and costs template and wording. The purpose of the testing was to compare the proposed templates with the existing templates and explore whether the proposed changes were:
- (a) easier to understand;
 - (b) more helpful in making comparisons; and
 - (c) more useful to consumers.
- 10 For more information on why we conducted consumer testing, the methodology used and the complete findings of the consumer testing, see [Report 638](#) *Consumer testing of the fees and costs tools for superannuation and managed investment schemes* (REP 638).
- 11 Susan Bell Research conducted a mix of individual interviews and group discussions with a sample of 40 people using a hybrid consumer test. This incorporated structured questions into a conversational-style qualitative research interview to give:
- (a) comparative data on the existing and proposed templates; and
 - (b) insight into why consumers understood, or misunderstood, the information presented in the templates (see REP 638 at pages 5–6).
- 12 Consumer testing showed that consumers want to know how much they are paying in fees and costs and what these fees and costs are for. Consumers are suspicious of financial services organisations ‘hiding’ fees and want transparency, but not at the expense of clarity: see REP 638 at page 7.
- 13 How the template looks is also important, with consumers preferring:
- (a) headings that use familiar language;
 - (b) concrete examples with fewer percentages;
 - (c) templates divided into:
 - (i) ongoing fees and costs; and
 - (ii) member activity related fees and costs;
 - (d) management fees (for managed investment products) at the top of the template; and
 - (e) tables that are not too dense and have enough ‘white space’ (see REP 638 at pages 7–8 and 11).
- 14 Consumer testing also showed that unfamiliar fees and costs should be explained clearly to consumers using non-technical plain language and that legalistic jargon, multi-part numeric expressions (such as ‘\$1.93 per week plus 0.30% p.a.’) and footnotes should be avoided. If consumers ‘cannot

understand the words or numbers, many will skim over the rest of the table or stop reading altogether': see REP 638 at pages 7, 9 and 12–14.

- 15 We discuss the feedback we received from the consumer testing at relevant points in this report.

Limited further stakeholder consultation

- 16 Following the close of the consultation period for [CP 308](#) and the consumer testing, we conducted limited further stakeholder consultation. We discussed amendments to some of the proposals in CP 308 following consideration of the submissions received. We consulted with:
- (a) the Association of Superannuation Funds of Australia (ASFA);
 - (b) the Australian Institute of Superannuation Trustees (AIST);
 - (c) the Financial Services Council (FSC);
 - (d) Chant West Pty Ltd;
 - (e) law firms and consumer bodies; and
 - (f) one other industry body that made a confidential submission to CP 308.
- 17 We discuss the feedback we received from this further consultation at relevant parts in this report.

Feedback received on our proposals

- 18 We received seven confidential and 28 non-confidential responses to CP 308. Responses came from a range of stakeholders, including issuers of superannuation products and managed investment products, industry associations, and various legal and consumer research bodies. We are grateful to respondents for taking the time to send us their comments. Copies of the non-confidential submissions are currently on the [CP 308](#) landing page on the ASIC website.
- 19 Respondents provided generally positive submissions to most of the proposals in CP 308, other than where we proposed to delay addressing recommendations in [REP 581](#). There was consensus that the proposals in CP 308 would, if implemented, make substantial improvements to the existing fees and costs disclosure requirements by:
- (a) simplifying and improving the presentation of information for consumers;
 - (b) improving alignment between disclosure for superannuation products and managed investment products;

- (c) providing more meaningful disclosure to consumers;
- (d) enabling consumers to understand the effect of fees and costs and make informed, value-for-money decisions about their investments; and
- (e) providing requirements and guidance that are clear, are capable of implementation and will result in lower costs for industry.

Our response to feedback received

- 20 In finalising our position, we have been informed by:
- (a) the feedback received on [CP 308](#);
 - (b) the consumer testing in [REP 638](#);
 - (c) the limited further stakeholder consultation; and
 - (d) consultation with the Australian Prudential Regulation Authority (APRA) and Treasury.
- 21 We have implemented most of the proposals in CP 308 and have:
- (a) updated and reissued [Regulatory Guide 97 *Disclosing fees and costs in PDSs and periodic statements*](#) (RG 97); and
 - (b) made [ASIC Corporations \(Disclosure of Fees and Costs\) Instrument 2019/1070](#).
- 22 We have decided not to implement some proposals in CP 308. We have also made changes to some of the proposals in CP 308. The purpose of these changes is to promote consistent disclosure and comparability and to provide commercial certainty.
- 23 In response to the limited further stakeholder consultation and consultation with APRA and Treasury, we have also decided to implement some additional changes that were not consulted on in CP 308. The additional changes include:
- (a) requiring a new line item for disclosure of performance fees in Product Disclosure Statements (PDSs) for managed investment products; and
 - (b) providing more explicit guidance about, and modifying Sch 10 to expressly require, the disclosure of fees and costs in a PDS on a gross of tax basis.
- 24 This report highlights the key issues that arose out of the submissions received on CP 308, the consumer testing, and the limited further stakeholder consultation. It provides details of the feedback received, and our response to this feedback, for:
- (a) the proposals requiring amendments to Sch 10 (see Section B);
 - (b) consumer testing of some proposed changes (see Section C);

- (c) the recommendations we proposed in CP 308 not to adopt at this stage (see Section D); and
- (d) additional proposals (see Section E).

Note: Section C of CP 308 contained proposals to implement recommendations in REP 581 that do not require amendments to Sch 10, including the recommendation to consumer test some proposed changes. We received broad support for these proposals, and so they are not discussed in this report other than in relation to the consumer testing of the proposed fees and costs disclosure—see Section C of this report.

25 Appendix 1 lists the non-confidential respondents to CP 308.

26 Appendix 2 summarises:

- (a) the recommendations in the expert’s external review ([REP 581](#));
- (b) the [CP 308](#) proposals in response to these recommendations; and
- (c) our response to the feedback received and to the consumer testing, including whether we:
 - (i) followed the REP 581 recommendations;
 - (ii) implemented the CP 308 proposals—in full, in part or with amendments; or
 - (iii) implemented additional changes that were not consulted on in CP 308 in response to feedback received.

27 This report is not meant to be a comprehensive summary of all submissions received. It is also not meant to be a detailed report on every question from CP 308. For a summary of submissions and our response see Appendix 2 to this report.

Commencement date and transitional arrangements

28 The new fees and costs disclosure requirements—in the updated version of [RG 97](#) (released November 2019) and [ASIC Corporations \(Disclosure of Fees and Costs\) Instrument 2019/1070](#)—will apply to:

- (a) PDSs issued on or after 30 September 2020; and
- (b) periodic statements (ongoing or on exit) for a reporting period that commences on or after 1 July 2021 (see Table 1).

29 Issuers may ‘opt-in’ to the new fees and costs disclosure requirements for periodic statements early by issuing periodic statements that meet the new requirements. In most cases, the new requirements for periodic statements will not apply for the whole 2020–21 financial year, unless entities ‘opt-in’. To ensure consistent and comparable fees and costs disclosure in PDSs, issuers will not be able to ‘opt-in’ early to the new requirements for PDSs.

- 30 For the requirements that apply before the commencement of ASIC Corporations (Disclosure of Fees and Costs) Instrument 2019/1070, see [Class Order \[CO 14/1252\]](#) *Technical modifications to Schedule 10 of the Corporations Regulations*. Links to this class order and the transitional version of RG 97 (released March 2017) are on the [RG 97](#) landing page on ASIC's website.

Table 1: When the requirements apply and our related guidance

Disclosure document	Commencement date and related guidance	Opt-in-early arrangements
PDS	<p>For PDSs issued before 30 September 2020, you must comply with [CO 14/1252]. The transitional version of RG 97 (released March 2017) applies to these PDSs.</p> <p>For PDSs issued on or after 30 September 2020, you must comply with ASIC Corporations (Disclosure of Fees and Costs) Instrument 2019/1070. The updated version of RG 97 (released November 2019) applies to these PDSs.</p>	You cannot opt in before the commencement date.
Periodic statement	<p>For periodic statements (ongoing or exit) for reporting periods that commence before 1 July 2021, you must comply with [CO 14/1252]. The transitional version of RG 97 (released March 2017) applies to these periodic statements.</p> <p>For periodic statements (ongoing or exit) for reporting periods that commence on or after 1 July 2021, you must comply with ASIC Corporations (Disclosure of Fees and Costs) Instrument 2019/1070. The updated version of RG 97 (released November 2019) applies to these periodic statements.</p>	<p>You may opt in to the updated requirements if the periodic statement is for a reporting period that:</p> <ul style="list-style-type: none"> commences on or after 1 July 2020; or ends on a day that is on or after 1 July 2020 if the reporting period ends on the exit date because the holder of the product ceased to hold the product on the exit date.

- 31 To promote clear and consistent disclosure and provide commercial certainty, we have restructured and reworded the guidance in RG 97. This includes clearer guidance on the existing fees and costs disclosure requirements that have not changed.
- 32 Although the transitional version of RG 97 (released March 2017) will continue to apply during the transitional period, industry can obtain immediate benefit from the clearer guidance in the updated version of RG 97 (released November 2019) about existing fees and costs disclosure requirements that have not changed.
- 33 In developing the transitional arrangements, we have had regard to the significant number of reforms affecting the superannuation and managed investment product industries. We want to ensure that issuers have time to focus on properly implementing the new regime.

B Proposals requiring amendments to Sch 10

Key points

Section B of [CP 308](#) contained proposals to implement the recommendations in [REP 581](#) that required amendments to Sch 10. Most of these proposals received broad support and have been implemented as proposed.

This section includes our responses to the feedback received on:

- changing the superannuation product ‘Fees and costs template’ to make it simpler for consumers;
- requiring disclosure of ‘Cost of product information’ to give a single figure that consumers can use to compare products and investment options;
- simplifying periodic statements;
- changing the treatment of transactional and operational costs to require disclosure of explicit transaction costs as a line item;
- changing the treatment of performance fees; and
- clarifying the treatment of costs paid out of reserves to promote product comparability and ensure disclosure of the total costs required to operate a superannuation product.

This section also incorporates our response to the limited further stakeholder consultation on additional proposals to:

- clarify the requirements for the tax treatment of fees and costs disclosure in PDSs to address inconsistent industry practices and improve comparability for consumers using fees and costs information; and
- increase transparency of performance fees for managed investment products.

Changing the superannuation product ‘Fees and costs template’

- 34 In [CP 308](#), we proposed to modify the ‘Fees and costs template’ for superannuation products to:
- (a) combine administration fees or investment fees with indirect costs, and present these as a single line item (see proposals B1(a)(i)–(ii)); and
 - (b) remove advice fees (intrafund advice costs) as a line item and include this cost in the disclosure of administration fees (see proposal B1(a)(iii)).
- 35 These proposals sought to help consumers make informed, value-for-money decisions about their investments by giving consumers simpler and more meaningful disclosure. They also sought to align the disclosure requirements for superannuation products with those for managed investment products.

Combining administration fees or investment fees with indirect costs—presented as a single line item

- 36 Most industry respondents supported proposals B1(a)(i)–(ii), although some expressed concerns that the proposals would:
- (a) affect visibility of administration fees (which are prospective in nature) and costs (which are retrospective in nature);
 - (b) reduce the visibility of the drivers of investment fees and costs;
 - (c) lead to double counting; and
 - (d) trigger the requirement to provide a significant event notification, which would be unnecessarily burdensome for industry.
- 37 Consumer testing generally supported the proposition that disclosure of indirect costs for superannuation funds was confusing. Consumers supported proposals B1(a)(i)–(ii), preferring clarity over transparency: see [REP 638](#) at pages 10 and 27.

ASIC's response

We have considered the feedback on proposals B1(a)(i)–(ii) about visibility. However, we remain of the view that these proposals will:

- simplify disclosure to consumers;
- align the disclosure requirements for superannuation products with those for managed investment products; and
- help consumers to make informed, value-for-money decisions about their investments.

We have implemented this proposal, with additional guidance to address industry concerns about the requirement to provide a significant event notification.

Removing advice fees as a line item

- 38 Industry respondents generally supported proposal B1(a)(iii), although some submitted that this removal would affect the visibility of the cost of this service to the fund and its members. Respondents were generally in favour of being able to include an additional breakdown of investment fees and indirect costs, either on their website or in the 'Fees and costs summary'.
- 39 Consumers had mixed views about proposal B1(a)(iii). Some consumers considered that removing the advice line item implied advice fees were being 'hidden', whereas others considered this proposal provided clearer disclosure: see [REP 638](#) at pages 9–10 and 26.

ASIC's response

We have considered the feedback on proposal B1(a)(iii) about visibility and transparency. We have decided to implement this

proposal because we consider it will simplify and provide more meaningful disclosure to consumers.

We think transparency and appropriate processes about fund expenditure on intrafund advice are important. But we also consider that separate cost information about intrafund advice is difficult for issuers to quantify and unlikely to be a significant factor in a consumer's decision on whether to acquire the superannuation product.

Disclosing 'Cost of product information'

- 40 In [CP 308](#), we proposed to require 'Cost of product information' to be disclosed in the 'Example of annual fees and costs' for superannuation products and managed investment products: see proposal B3. Among other matters, we proposed that a contribution of \$5,000 on the last day of the year should be included in the 'Example of annual fees and costs' and 'Cost of product information' for superannuation products: see proposal B3(a)(v). This is already a requirement for managed investment products.
- 41 This proposal sought to align the disclosure requirements for superannuation products with those for managed investment products to help consumers make informed, value-for-money decisions about their investments.
- 42 Industry respondents were largely supportive of proposals B3(a)(i)–(iv) on how 'Cost of product information' should be disclosed. However, respondents from the superannuation industry did not support proposal B3(a)(v) because they considered that this fee amount was not useful and also unnecessarily complex. Respondents submitted that disclosure of the \$5,000 amount is confusing in the superannuation context because it may be misinterpreted by the consumer as a contribution or entry fee—which are not permitted for MySuper products.
- 43 'Cost of product information' was included in the consumer testing, but there was no specific feedback about whether this \$5,000 contribution was meaningful: see [REP 638](#) at pages 10, 28–9, 45, 54 and 68.

ASIC's response

We have considered industry feedback on proposal B3(a)(v).

We have decided not to implement proposal B3(a)(v) for superannuation products because disclosure of the \$5,000 amount is confusing in this context. It may be misinterpreted as a contribution or entry fee, which are not permitted for MySuper products.

However, we consider that the \$5,000 contribution is meaningful for managed investment products. Responsible entities must continue to disclose it on the last day of the period and include it in the 'Example of annual fees and costs' and 'Cost of product information'.

Periodic statements

- 44 In [CP 308](#), we consulted on updated guidance for periodic statements in draft updated RG 97 at RG 97.124–RG 97.127. We proposed that in respect of the tax implications of fees and costs on disclosed transactions, disclosure must show two transactions:
- (a) one for the full amount charged; and
 - (b) one for the tax benefit that was passed on to the member. This is only shown if the payment of a fee or cost results in the superannuation entity becoming entitled to a tax deduction and this is passed on to members (see proposal B4 in CP 308, draft updated RG 97 at RG 97.124–RG 97.127 and consultation question B4Q12).
- 45 This proposal sought to:
- (a) address the industry practice of disclosing fees and costs on a net of tax basis in periodic statements, which is inconsistent with ASIC guidance that has been in place since 2005; and
 - (b) provide more meaningful disclosure to consumers to help them make informed, value-for-money decisions about their investments.
- 46 We conducted limited further stakeholder consultation on this proposal. The feedback from superannuation industry respondents was mixed, generally favouring disclosure on a net basis. Submissions highlighted the ongoing differences of approach across sectors of the superannuation industry. There is a view that fees should be disclosed net of tax, to reflect the member experience, rather than be disclosed on a gross basis. Superannuation industry representatives preferred disclosure in periodic statements on a net basis because this is the industry practice and would provide consistency without undue disruption.

ASIC's response

We consider that consistent tax treatment is critical for product comparability.

Despite the mixed industry response, we remain of the view that fees and costs should be disclosed in periodic statements on a gross basis unless the tax benefit has been specifically passed on to the member, in which case both amounts should be disclosed.

We have implemented proposal B4 in the form outlined in CP 308.

Clarifying requirements for tax treatment in PDSs

- 47 Under the existing fees and costs disclosure requirements that have been in place since 2005, fees and costs must be shown gross of tax in a PDS.

- 48 We provided guidance on the fees and costs disclosure requirements in [Report 398](#) *Fee and cost disclosure: Superannuation and managed investment products* (REP 398), issued in 2014, and in RG 97. However, the superannuation industry has applied inconsistent tax treatment of fees and costs disclosure in PDSs.
- 49 We did not consult explicitly in CP 308 about the tax treatment in PDS disclosure. However, in order to address inconsistent industry tax treatment in PDS disclosure, we included guidance in the draft updated RG 97 to clarify that fees and costs in a PDS must be disclosed on a gross of tax basis.
- 50 The feedback from limited further stakeholder consultation on this guidance was mixed. Two stakeholders favoured disclosure on a net basis to reflect member experience, whereas another two stakeholders favoured disclosure on a gross basis to reflect the true cost of operating the fund. The feedback highlighted the ongoing differences of approach across sectors of the superannuation industry.

ASIC's response

We consider that consistent tax treatment is critical for product comparability.

Despite mixed industry support for our existing requirements for tax treatment in PDSs, we remain of the view that total fees and costs paid should be presented in the PDS gross of any tax benefit. This is because:

- it aligns with our understanding of the legislative intention behind Sch 10;
- it aligns with the recommendation in the Super System Review's [Final report](#) (published November 2015) that costs and fees should be disclosed gross of tax;
- the impact of any entity-level tax deductions and the extent to which they will be passed on to members or product holders through lower after-tax fees or costs is not necessarily known at the time of preparing a PDS; and
- it reflects the fact that the actual tax benefit received will depend on a number of factors.

To promote industry practices that are consistent with the fees and costs disclosure requirements, we have:

- amended the guidance in [RG 97](#) to make it explicit how fees and costs should be disclosed; and
- modified Sch 10 to expressly require that the total fees and costs paid are to be presented gross of tax.

Changing the treatment of transactional and operational costs

- 51 In [CP 308](#), we proposed to change the treatment of transactional and operational costs to (among other matters) require disclosure of counterparty spreads but not ‘implicit transaction costs’: see proposals B5–B7.

Removing property operating costs, borrowing costs and implicit transaction costs

- 52 We proposed to exclude ‘implicit transaction costs’ from the fees and costs disclosed in PDSs and periodic statements (see proposal B6(a)) because implicit transaction costs are generally not objectively observable. We did not propose a definition for implicit transaction costs. We also sought submissions about whether ‘market impact costs’—which is a term commonly used in the industry—or other types of costs should also be excluded.
- 53 These proposals sought to:
- (a) simplify and provide more meaningful disclosure to consumers to help them make informed, value-for-money decisions about their investments; and
 - (b) reduce business costs and make the fees and costs disclosure requirements more practicable for industry.
- 54 Most industry respondents agreed that ‘implicit transaction costs’ should not be included. However, there were mixed views on whether the draft amendments to Sch 10:
- (a) were comprehensive enough to exclude all ‘implicit transaction costs’;
 - (b) should also refer to ‘market impact costs’; and
 - (c) promoted consistent and comparable costs disclosure, given there are no enforceable definitions for ‘implicit transaction costs’ or ‘market impact costs’.
- 55 Industry respondents did not provide a definition of ‘implicit transaction costs’ or ‘market impact costs’.

ASIC’s response

We decided to remove ‘implicit transaction costs’ and ‘market impact costs’ from the fees and costs disclosure requirements and to provide clear guidance about this exclusion. This change strikes an appropriate balance between:

- providing information that can help consumers make informed, value-for-money decisions; and
- ensuring that the disclosure requirements are practicable for industry.

We have implemented this proposal, with amendments, to broaden the term 'implicit transaction costs' to also refer to 'market impact costs'.

We will observe market practices and developments to determine whether the exclusion is operating as intended.

Inclusion of counterparty spreads

56 We proposed to require disclosure of counterparty spreads in PDSs and periodic statements: see proposal B7(a). This disclosure would be made in:

- (a) the new 'Transaction costs (net)' line item in the 'Example of annual fees and costs' (see proposals B5(a), B5(d)(iii) and B7(a));
- (b) the 'Cost of product information' (see proposal B5(b)); and
- (c) the 'Additional explanation of fees and costs' (see proposals B5(a) and (c)).

Note: Proposal B5 also considered the disclosure of explicit transaction costs.

57 These proposals sought to prevent industry from avoiding disclosing brokerage by dealing with market makers instead of brokers.

58 We did not propose a definition for 'counterparty spreads' but sought industry feedback about how the concept should be defined: see proposal B7(b) and consultation question B7Q2.

59 Industry respondents generally did not support including counterparty spreads in transaction costs. This was mainly because, as an implicit cost, it is difficult to measure and is influenced by many factors. Most argued that it was complex and impractical to disclose, especially without a prescribed calculation methodology, and would lead to industry inconsistency. Industry provided submissions about suitable definitions for counterparty spreads, but these lacked commonalities.

60 Some industry respondents noted that, while they may be able to calculate counterparty spreads for certain asset classes, instruments and markets, they are not always able to. Some noted that counterparty spreads could be estimated when exact calculations are not available, but that they would need additional guidance on how this should be done.

ASIC's response

We consider that until an industry-wide methodology or an enforceable definition for counterparty spreads is established, requiring disclosure of counterparty spreads at this stage would lead to considerable industry costs without providing consistent and comparable costs disclosure. We have decided not to implement the requirements in proposals B5–B7 that entities must disclose counterparty spreads.

We consider that having a 'best execution' policy forms part of best practice and is a formal obligation in some markets. It will generally prevent issuers from using alternate arrangements to make fees and costs appear cheaper.

We will continue to monitor market practices through our surveillance activities, subject to other priorities, and review international regulatory practices in this area. We will act if we see a trend emerging where investment pathways are shifted to make fees and costs appear cheaper.

Changing the treatment of performance fees

- 61 In [CP 308](#), we proposed changing the way performance fees should be classified (see proposal B8), and how they should be calculated (see proposal B9) and disclosed in a PDS (see proposal B10).

Calculating performance fees for superannuation and managed investment products

- 62 We proposed to require trustees and responsible entities to calculate the amount of performance fees disclosed in a PDS using the average of the performance fees that accrued in the product in each of the previous five years (among other matters): see proposal B9. We also consulted on providing guidance that when a negative five-year average performance fee is calculated, it should be disclosed as 'nil', 'zero' or '0': see draft updated RG 97 at RG 97.389.
- 63 This proposal sought to provide more reliable disclosure of performance fees to consumers, to help them make informed, value-for-money decisions about their investments.
- 64 Although industry respondents were largely supportive of the requirements for calculating and estimating performance fees in proposal B9, they had mixed views about the treatment of negative performance fees. Some respondents submitted that disclosing a negative amount for the five-year average calculation as 'nil', 'zero' or '0' could be misleading.

ASIC's response

We are concerned that negative performance fees may be confusing and conceptually difficult for users. We are also concerned that negative performance fees may lead consumers to believe that they are receiving a refund, or costs are less than they would normally be, when this may not be the case. However, we also agree that disclosure of 'nil', 'zero' or '0' for a negative five-year average performance fee, without further explanation, may not accurately reflect the cost or performance.

We have decided to implement an amended version of this proposal. Responsible entities of managed investment products must, when there is a negative five-year average performance for their managed investment product, include the text 'See additional explanation of fees and costs' in the 'Fees and costs summary' in the 'amount' column. We have similarly amended the footnote in relation to performance fees in the superannuation 'Fees and cost summary' to include the text 'See additional explanation of fees and costs' if the amount is negative.

Disclosing performance fees for superannuation and managed investment products

65 We also proposed to include performance fee information in a footnote when it is included in:

- (a) the 'investment fees and costs' for superannuation products; or
- (b) the 'management fees and costs' for managed investment products (see proposal B10(a)).

66 We considered submissions from industry and the effect that performance fees have on consumers' investments. We also considered feedback from consumer testing, which recommended avoiding footnotes where possible: see [REP 638](#) at page 14. It became apparent that this information would not be sufficiently visible if disclosed in a footnote for managed investment products. We consider the disclosure of performance fees may be of greater value for consumers deciding on whether to invest in a particular managed investment product.

67 We conducted limited further stakeholder consultation on a proposal to require responsible entities to disclose performance fees as a separate line item in the 'Fees and costs summary' and to include the amount of performance fees in the 'Example of annual fees and costs'. The feedback from this consultation was largely supportive of this approach.

ASIC's response

We consider that the amended approach will enhance transparency, comparability and consumer understanding of the effect of performance fees on an investment in the managed investment product.

We have decided to implement this proposal:

- as outlined in CP 308 for superannuation products; and
- with the amendments for managed investment products.

Clarifying the treatment of amounts of costs met from reserves for superannuation products

- 68 In [CP 308](#), we proposed to amend the definitions of the renamed ‘investment fees and costs’ and ‘administration fees and costs’ to make it clear that these fees and costs include costs met using reserves: see proposal B11.
- 69 Superannuation trustees may establish reserves for different purposes, including managing administration, investment and operational risk. These reserves are funded in various ways.
- 70 This proposal sought to promote product comparability. It proposed that the trustee must include costs that are met from amounts in reserves in the calculation of all administration and investment-related fees and costs for a superannuation product or investment option. This calculation must appear as one line item in the ‘Fees and costs summary’.
- 71 Some industry respondents considered that costs paid out of reserves should not be captured by the fees and costs disclosure requirements. They were strongly opposed to the proposed treatment on the basis that it may result in double counting. This concern can arise when amounts that are sourced from disclosed fees and costs of a superannuation fund have been credited to a reserve.

ASIC’s response

We consider that clarifying that costs paid out of reserves are captured by the fees and costs disclosure requirements will promote product comparability.

We have implemented proposal B11 with amendments. We have further modified Sch 10 to reduce the risk of double counting. Trustees must disclose amounts debited from a reserve if they are in excess to amounts credited to the reserve during the previous year.

C Consumer testing and fees and costs template changes

Key points

This section outlines the key issues arising from feedback received about our proposal to conduct consumer testing of some proposals. We proposed to test:

- whether the templates and wording changes are easier to understand;
- whether they provide more useful information; and
- whether they promote comparison for consumers (see proposal C1).

In response to feedback from consumer testing, we decided not to implement proposal C1(d) to change the name of the ‘Additional explanation of fees and costs’ to the ‘Fees and costs details’.

Consumer testing of some proposed changes

- 72 In [CP 308](#), we proposed to:
- (a) change the name of the ‘Fees and costs template’ to the ‘Fees and costs summary’ (see proposal C1(c)); and
 - (b) change the name of the ‘Additional explanation of fees and costs’ to the ‘Fees and costs details’ (see proposal C1(d)).
- 73 These proposals sought to simplify and improve the presentation of information for consumers to help them make informed, value-for-money decisions about their investments.
- 74 We received limited submissions from industry on these proposals. They were supportive if consumer testing found that these new names simplified and improved the presentation of information for consumers.
- 75 Consumers expressed a clear preference for changing the name from the ‘Fees and costs template’ to the ‘Fees and costs summary’. However, consumers preferred the existing name of the ‘Additional explanation of fees and costs’ over the proposed ‘Fees and costs details’ for managed investment products. There was no clear preference between ‘Additional explanation of fees and costs’ or ‘Fees and costs details’ for superannuation products: see [REP 638](#) at pages 31–2 and 41–2.

ASIC's response

After considering the feedback from consumer testing, we have:

- implemented proposal C1(c)—that is, we have changed the name of the 'Fees and costs template' to the 'Fees and costs summary'; and
- not implemented proposal C1(d)—that is, we have retained the name of the 'Additional explanation of fees and costs', instead of the name 'Fees and costs details'.

D Other recommendations in Report 581

Key points

Section D of [CP 308](#) sought feedback on recommendations from [REP 581](#) that we did not propose to adopt at this stage.

This section outlines the key issues arising from feedback received about our proposals to:

- defer conducting a feasibility study into a consumer comparison tool due to the significant resources required and the pending release of the final report of the Productivity Commission’s Superannuation: Assessing Efficiency and Competitiveness Inquiry (see proposal D1); and
- defer adopting the recommendations on platform disclosure to expedite implementation of the other proposals in CP 308 (see proposal D2).

We have not altered our position on any of the proposals in Section D.

Deferring a feasibility study into a consumer comparison tool

- 76 In [CP 308](#), we proposed to defer formal consultation on recommendations 1–2 in [REP 581](#) about the development of a publicly accessible, consumer-facing comparison tool: see proposal D1. We proposed this because development of such a tool would require significant resources and the Productivity Commission’s Superannuation: Assessing Efficiency and Competitiveness Inquiry may affect these recommendations.
- 77 Consumer groups submitted that consumers hampered by low levels of financial literacy cannot find product disclosures, do not read them and/or cannot understand their content. These groups consider that while the other proposals in CP 308 are welcome additions, they should not be an end-point to solving the problems with disclosure—a consumer comparison tool is required to create confident and informed consumers.
- 78 Consumer groups also noted that the Productivity Commission’s report has been released and strongly recommends the creation of such a comparison tool: see Productivity Commission, [Superannuation: Assessing efficiency and competitiveness](#), 21 December 2018 (final report).
- 79 Other respondents were generally supportive of the development of a consumer comparison tool. Industry respondents focused on how the tool would work.

ASIC’s response

We support the development of a publicly accessible, consumer-facing comparison tool—although we consider that it is important

that the tool covers more than fees and costs. We also consider that any tool should initially focus on superannuation products, given that these are more widely held by Australians.

However, we have decided to defer formal consideration of the recommendations to undertake a feasibility study pending the Government's response to the final report of the Productivity Commission.

We will consider the Government's response to the final report of the Productivity Commission, and any developments, to determine whether to undertake a feasibility study in future.

Deferring formal consultation on platform disclosure

- 80 In [CP 308](#), we proposed to defer formal consultation on recommendations 17–19 and 21 in [REP 581](#) on platform disclosure: see proposal D2(a). We proposed this because the consideration of these recommendations would:
- (a) be a significant undertaking and would delay the implementation of the other proposals in CP 308; and
 - (b) need to take into account the findings of our work on platforms.
- 81 We also sought industry's preliminary feedback on making recommendations 17–20 of REP 581 legal obligations.
- 82 Industry respondents have been largely critical of our decision to defer consideration of changes to the existing platform fees and costs disclosure settings. Most respondents considered that this disclosure is important and needs to change. Industry is concerned that basic consumer protections are not being met because of inconsistent disclosure between superannuation products and managed investment products, or even within the same product.

ASIC's response

We have considered the industry feedback and agree that consumers need simple, clear, meaningful and consistent disclosure of fees and costs in platforms to help them:

- make informed, value-for-money decisions about their investments; and
- understand how fees and costs are affecting their investment.

However, we maintain that proper consideration of platform disclosure will delay the implementation of the other proposals in CP 308. We consider that delaying the implementation of these other proposals would not help consumers or industry.

Platform issuers risk misleading consumers if disclosure is not clear about the impact of fees and costs associated with

investments accessed via the platform. We have made amendments to [RG 97](#) to highlight this.

We will undertake work on fees and costs disclosure in platforms and will continue to monitor and observe market practices and developments to inform our future proposals on fees and costs disclosure for platforms.

E Additional proposals

Key points

Section E of [CP 308](#) contained additional proposals.

This section outlines the key issues arising from feedback received on these proposals, including the proposal to maintain the treatment of derivative financial products: see proposal E2. We have maintained this treatment to ensure that we do not reduce consumer protections created by the Protecting Your Superannuation Package (PYSP) regime.

We have implemented all the proposals in Section E of CP 308, as proposed.

Treatment of derivative financial products

- 83 In [CP 308](#), we proposed to maintain the present treatment of derivative financial products for the purposes of calculating ‘indirect costs’: see proposal E2(a). We chose this approach because:
- (a) the external expert did not make any specific recommendations on the treatment of costs associated with derivative financial products in [REP 581](#); and
 - (b) we wanted to first seek industry feedback on how disclosure requirements for derivative financial products should be aligned to promote consistent disclosure between superannuation products and managed investment products.
- 84 Derivative financial products are included in the indirect costs of superannuation products and managed investment products under cl 101A of Sch 10.
- 85 Industry submissions were mixed, although the majority disagreed with our proposal to maintain the present treatment. Industry considered that treatment should be aligned to promote consistent disclosure between superannuation products and managed investment products. This alignment would be particularly beneficial for investment managers and service providers, who could apply the same processes for superannuation products and managed investment products.

ASIC’s response

We considered industry feedback on the benefits of aligning disclosure and the potential impact on the PYSP regime.

We have implemented proposal E2 in the form proposed in CP 308, by maintaining the present treatment of derivative financial products for the purposes of calculating 'indirect costs'.

The PYSP regime has introduced fee capping protections for consumers, which cap 'indirect costs' but not transaction costs. If we change the calculation of indirect costs, this may reduce the protections intended by the PYSP regime.

Appendix 1: List of non-confidential respondents

-
- Actuaries Institute
 - Association of Financial Advisers Ltd
 - AIMA Australia
 - AIST
 - ASFA
 - Australian Investment Council
 - AustralianSuper Pty Ltd, trustee of AustralianSuper
 - BlackRock Investment Management (Australia) Limited
 - Chant West Pty Limited
 - CHOICE, Superannuation Consumers' Centre
 - Equity Trustees Limited
 - Financial Express Australia
 - FSS Trustee Corporation, trustee for the First State Superannuation Scheme
 - Financial Planning Association of Australia
 - Financial Services Council Hartley, David
 - Industry Super Australia Pty Ltd
 - Johnson Winter & Slattery
 - Klein, Fritz Thomas
 - Law Council of Australia
 - Perpetual Limited
 - Peterson Research Institute
 - Pinnacle Investment Management Group Limited
 - Property Council of Australia
 - Property Funds Association
 - SCS Super Pty Limited, as trustee of Australian Catholic Superannuation & Retirement Fund
 - Telstra Super Pty Ltd, trustee of the Telstra Superannuation Scheme
 - Vanguard Investments Australia Ltd
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Appendix 2: Summary of proposals and our response to feedback

- 86 This appendix summarises:
- (a) the recommendations in the expert’s external review ([REP 581](#));
 - (b) the [CP 308](#) proposals in response to these recommendations; and
 - (c) our response to the feedback received and to the consumer testing, including whether we:
 - (i) followed the REP 581 recommendations;
 - (ii) implemented the CP 308 proposals—in full, in part or with amendments; or
 - (iii) implemented additional changes that were not consulted on in CP 308 in response to feedback received.
- 87 Reflecting the structure of CP 308 and of this report, there are four tables that summarise each of these aspects for:
- (a) proposals requiring amendments to Sch 10 (see Table 2);
 - (b) proposals not requiring amendments to Sch 10 (see Table 3);
 - (c) recommendations we proposed not to adopt at this stage (see Table 4); and
 - (d) additional proposals (see Table 5).

Proposals requiring amendments to Sch 10

88 Section B of [CP 308](#) contained proposals to implement the recommendations in [REP 581](#) that required amendments to Sch 10. We generally agreed with the rationale and followed the REP 581 recommendations in making these proposals. Most proposals in Section B of CP 308 received broad support from industry and consumer testing, and have been implemented as proposed.

Table 2: Proposals requiring amendments to Sch 10

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
<p>Changing the superannuation product 'Fees and costs template'</p> <p>Single line items for administration fees and costs, and for investment fees and costs</p>	<p>Recommendation 11: For superannuation products, the distinction between 'investment fees' and 'indirect costs' should be removed from the 'Fees and costs template' by merging the two items into a single line item titled 'Investment fees and costs'.</p> <p><i>Rationale:</i> The distinction between investment fees and indirect costs does not matter because one amount offsets the other. Additionally, the distinction is not meaningful for consumers: see REP 581 at page 99.</p>	<p>Proposal B1(a): To modify the 'Fees and costs template' for superannuation products to:</p> <ul style="list-style-type: none"> (i) present all administration fees and costs as one line item, by merging administration fees and indirect costs that relate to the administration or operation of the superannuation entity; and (ii) present all investment fees and costs as one line item, by merging investment fees and indirect costs that relate to investment of the superannuation entity's assets. <p>Proposal B1(b) explains how we propose to give effect to these proposals.</p>	<p>Recommendation 11 adopted.</p> <p>Proposal B1(a)(i) and (ii) implemented, providing additional guidance on the requirement to provide a significant event notification.</p> <p><i>Rationale:</i> Industry and consumer testing generally supported these proposals, although industry expressed concerns that the proposals would reduce transparency and may trigger the requirement to provide a significant event notification: see paragraphs 34–37 of this report.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
<p>Changing the superannuation product 'Fees and costs template'</p> <p>Removing advice fees as a line item</p>	<p>Recommendation 8: The line item for 'Advice fees' in the 'Fees and costs template' for superannuation products should be removed. When the amount is not nil, the amount can be incorporated into the line 'Administration fee'.</p> <p><i>Rationale:</i> Consumers confuse intrafund advice fees with individual advice fees. The template should only include significant fee items. Intrafund advice fees should not be included: see REP 581 at page 97.</p>	<p>Proposal B1(a)(iii): To require entities to remove advice fees (intrafund advice costs) as a line item and include this cost in the disclosure of administration fees.</p> <p>Proposal B1(b) explains how we propose to give effect to this proposal.</p>	<p>Recommendation 8 adopted.</p> <p>Proposal B1(a)(iii) implemented.</p> <p><i>Rationale:</i> Industry generally supported our proposal. Consumer testing was equivocal and along with industry raised concerns about transparency. Despite concerns about transparency, we consider this proposal will simplify and provide more meaningful disclosure to consumers: see paragraphs 34–35 and 38–39 of this report.</p>
<p>Changing the superannuation product 'Fees and costs template'</p> <p>Grouping 'Ongoing annual fees and costs' and 'Member activity related fees and costs'</p>	<p>Recommendation 6: Modify the 'Fees and costs template' for superannuation products in cl 201 of Sch 10 to group together those ongoing fee and cost items separately from those that depend on member-initiated transactions or activities.</p> <p><i>Rationale:</i> Grouping will improve consumer understanding of the fees and costs: see REP 581 at page 97.</p>	<p>Proposal B1(a)(iv): To modify the 'Fees and costs template' for superannuation products to group together the 'Ongoing annual fees and costs' separately from the 'Member activity related fees and costs'.</p> <p>Proposal B1(b) explains how we propose to give effect to this proposal.</p>	<p>Recommendation 6 adopted.</p> <p>Proposal B1(a)(iv) implemented.</p> <p><i>Rationale:</i> Feedback and consumer testing was generally supportive of this proposal.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
<p>Changing the managed investment product ‘Fees and costs templates’</p>	<p>Recommendation 9: Modify the ‘Fees and costs templates’ for managed investment products in cls 202 and 202A of Sch 10 to place ‘management costs’ at the top of the templates.</p> <p><i>Rationale:</i> Management costs are the most relevant fee for managed investment products, and should appear first: see REP 581 at page 98.</p> <p>Recommendation 10: Modify the managed investment scheme ‘Fees and costs templates’ in cls 202 and 202A of Sch 10 to include a line for ‘buy–sell spread’.</p> <p><i>Rationale:</i> Buy–sell spreads are a significant fee and should appear in the ‘Fees and costs templates’: see REP 581 at page 98.</p>	<p>Proposal B2(a): To modify the ‘Fees and costs templates’ for managed investment products to:</p> <ul style="list-style-type: none"> (i) change management costs to management fees and costs, to match the term used in Figure 9 and Example 1 of draft updated RG 97, and place this line item at the top of the ‘Fees and costs templates’; and (ii) include a line item for buy–sell spread. <p>Proposal B2(b) explains how we propose to give effect to these proposals.</p>	<p>Recommendations 9 and 10 adopted.</p> <p>Proposal B2(a) implemented.</p> <p><i>Rationale:</i> Feedback and consumer testing was generally supportive of this proposal.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
Disclosing 'Cost of product information'	<p>Recommendation 13: Extend the 'Example of annual fees and costs' to all investment options by the calculation and disclosure of an abbreviated 'Cost of product' figure, with flexibility about where the 'Cost of product' figure should be disclosed (either in the PDS, incorporated by reference or in some other manner).</p> <p>Recommendation 14: The 'Example of annual fees and costs' and the abbreviated 'Cost of product' calculation for superannuation products should incorporate a contribution of \$5,000 on the last day of the period.</p> <p><i>Rationale:</i> Cost of product information will provide a simple, single figure to help consumers make investment choices. To align disclosure, the same assumptions should be used, including the \$5,000 contribution required for managed investment product disclosure: see REP 581 at pages 103 and 106.</p>	<p>Proposal B3(a): To require 'Cost of product information' to be disclosed by:</p> <ul style="list-style-type: none"> (i) extending the current 'Example of annual fees and costs' for superannuation products and managed investment products, to include the calculation and disclosure of abbreviated 'Cost of product information' for each MySuper product and each investment option offered by the superannuation entity, and for each investment option offered by the managed investment scheme; (ii) basing the 'Cost of product information' on a \$50,000 balance; (iii) requiring that the 'Cost of product information' for full PDSs be disclosed in the PDS and not be permitted to be incorporated by reference; (iv) not requiring the 'Cost of product information' to be included in the body of shorter PDSs, but instead requiring that it be provided as part of the fees and costs information that must be disclosed in accordance with Sch 10, under cl 8(10) of Schs 10D and 10E (issuers are permitted under those provisions to incorporate this information by reference); and (v) incorporating a contribution of \$5,000 on the last day of the year in the 'Cost of product information' and the 'Example of annual fees and costs' for superannuation products (noting that managed investment products already incorporate a contribution of \$5,000). <p>Proposal B3(b) explains how we propose to give effect to these proposals.</p>	<p>Recommendation 13 adopted.</p> <p>Proposals B3(a)(i)–(iv) implemented.</p> <p><i>Rationale:</i> Industry respondents were largely supportive of proposals B3(a)(i)–(iv) on how 'Cost of product information' should be disclosed.</p> <p>Recommendation 14 not adopted.</p> <p>Proposal B3(a)(v) not implemented.</p> <p><i>Rationale:</i> Industry did not support proposal B3(a)(v) because of concerns that this \$5,000 contribution could be misinterpreted as a contribution or entry fee, which is not permitted for MySuper products: see paragraphs 40–43 of this report.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
<p>Simplifying periodic statements</p>	<p>Recommendation 16: Consider consequential changes to the disclosure of fees and costs in periodic statements, having regard to the following objectives:</p> <ul style="list-style-type: none"> • reducing the relative over-emphasis on amounts deducted from investments; • reducing the number of data points; and • making the item headings easier for consumers to understand. <p><i>Rationale:</i> The volume of data presented in periodic statements would be overwhelming to consumers: see REP 581 at page 109.</p>	<p>Proposal B4(a): To amend the requirements for periodic statements for superannuation products and managed investment products, so they contain the following three lines:</p> <ul style="list-style-type: none"> (i) ‘Fees deducted from your account’; (ii) ‘Fees and costs deducted from your investment’; and (iii) ‘Total fees and costs you paid’. <p>Proposal B4(b) explains how we propose to give effect to this proposal, including proposed tax treatment for fees and costs disclosure.</p>	<p>Recommendation 16 adopted.</p> <p>Proposal B4 implemented.</p> <p><i>Rationale:</i> Although we received mixed industry feedback to this proposal, we consider consistent tax treatment is critical for product comparability. Fees and costs should be disclosed in periodic statements on a gross basis unless the tax benefit has been specifically passed on to the member, in which case both amounts should be disclosed: see paragraphs 44–46 of this report.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
<p>Changing the treatment of transactional and operational costs</p> <p>Transaction costs (net) as a separate line item in the 'Fees and costs template' and in the 'Example of annual fees and costs'</p>	<p>Recommendation 24: Apply the characterisation methodology in Chapter 7.3 of REP 581 in reconsidering the commonly raised data issues listed in the report and in considering other points that will inevitably arise over time, and disclose 'explicit transaction costs' and 'counterparty spreads' according to the methodology for category 1 items.</p> <p>The characterisation methodology is:</p> <ul style="list-style-type: none"> • <i>Category 1 items</i> should be disclosed in the headline tools (the 'Fees and costs template' and the 'Example of annual fees and costs'). • <i>Category 2 items</i> are those that do not satisfy Category 1 criteria but should still be disclosed in PDSs and periodic statements. • <i>Category 3 items</i> are those that do not belong in PDSs but could be left to other explanatory documents, such as issuer websites or statistical returns. • <i>Category 4</i> covers items that are disproportionately burdensome to identify, produce and/or maintain, having regard to the relevance to the common understanding of the fees and costs narrative (see REP 581 at 119–21). <p><i>Rationale:</i> Explicit transaction costs and counterparty spreads meet many of the criteria of the Category 1 items, and are tangible and relevant for cross-product comparison. These costs should be disclosed unless:</p> <ul style="list-style-type: none"> • consumer testing shows that they are not relevant to consumer decision making; and • it can be shown that counterparty spreads are not being used instead of alternative trading strategies to avoid disclosing fees and costs (see REP 581 at pages 133–5). 	<p>Proposal B5(a): To require disclosure of explicit transaction costs and counterparty spreads (see proposal B7) as a separate line item in the 'Fees and costs template' and in the 'Example of annual fees and costs' for superannuation products and managed investment products.</p> <p>Proposal B5(b): To include explicit transaction costs and counterparty spreads in the calculation of the 'Cost of product information': see recommendation 13 in REP 581 and proposal B3 in CP 308.</p> <p>Proposal B5(c): To require that these costs be shown net of any amounts recovered by the buy–sell spread charged by the superannuation trustee or responsible entity. The gross amount of explicit transaction costs and counterparty spreads will be set out in the 'Additional explanation of fees and costs' (to be renamed 'Fees and costs details') in cl 209(j)(ia) of Sch 10.</p> <p>Proposal B5(d) explains how we propose to give effect to these proposals, including:</p> <ul style="list-style-type: none"> • making provision for a transaction costs (net) line; and • excluding explicit transaction costs and counterparty spreads from other fees and costs definitions to avoid double counting. 	<p>Recommendation 24:</p> <ul style="list-style-type: none"> • adopted for disclosure of 'explicit transaction costs'; and • not adopted for disclosure of 'counterparty spreads'. <p>Proposal B5:</p> <ul style="list-style-type: none"> • implemented to the extent it concerns disclosure of explicit transaction costs; and • not implemented to the extent it concerns disclosure of counterparty spreads. <p><i>Rationale:</i> Industry held mixed views on the proposals for disclosure of explicit transaction costs, but did not support proposals for disclosure of counterparty spreads because they are complex and impractical to disclose, especially without a prescribed calculation methodology.</p> <p>We have decided to implement the proposals for explicit transaction costs, but not for counterparty spreads. We consider that until an industry-wide methodology or an enforceable definition for counterparty spreads is established, this proposal would lead to considerable industry costs without providing consistent and comparable costs disclosure: see paragraphs 56–60 of this report.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
<p>Changing the treatment of transactional and operational costs</p> <p>Removing property operating costs, borrowing costs and implicit transaction costs</p>	<p>Recommendation 24: Apply the characterisation methodology in Chapter 7.3 of REP 581 for dealing with ‘property operating costs’, ‘borrowing costs’ and ‘implicit transaction costs’. The starting point should be to not require their disclosure: see REP 581 at page 136.</p> <p><i>Rationale:</i> In most jurisdictions, these costs are not included in consumer-facing disclosure. Consumers are unlikely to expect this disclosure or understand these costs, given their technical nature: see REP 581 at pages 130–6.</p>	<p>Proposal B6(a): To not require property operating costs, borrowing costs and implicit transaction costs to be disclosed in PDSs and periodic statements.</p> <p>Proposal B6(b) explains how we propose to give effect to this proposal.</p> <p>Proposal B6(c): To require that any operational costs that are not explicit transaction costs, counterparty spreads, implicit transaction costs, property operating costs or borrowing costs (to the extent that any exist) be treated as a part of administration fees for superannuation products (to be renamed ‘administration fees and costs’) or management costs for managed investment products (to be renamed ‘management fees and costs’).</p>	<p>Recommendation 24 and REP 581 recommendation at page 136 adopted for not requiring disclosure of property operating costs, borrowing costs and implicit transaction costs.</p> <p>Proposal B6 implemented, with amendments to broaden the terms of the exclusion for ‘implicit transaction costs’ to also refer to ‘market impact costs’.</p> <p><i>Rationale:</i> Industry feedback supported the proposal that property operating costs, borrowing costs and implicit transaction costs should not be disclosed, but held mixed views on whether a reference to ‘market impact costs’ was necessary. We consider that excluding ‘market impact costs’ strikes an appropriate balance between providing meaningful information to users and ensuring that the fees and costs disclosure regime is practicable for industry: see paragraphs 52–55 of this report.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
<p>Changing the treatment of transactional and operational costs</p> <p>Inclusion of counterparty spreads</p>	<p>Recommendation 24: Apply the characterisation methodology in Chapter 7.3 of REP 581 for dealing with ‘counterparty spreads’.</p> <p><i>Rationale:</i> See the rationale for proposal B5 above for our response to feedback.</p>	<p>Proposal B7(a): To require entities to include counterparty spreads when disclosing transaction costs in PDSs and periodic statements.</p> <p>Proposal B7(b): At this stage, not to define counterparty spreads in Sch 10 because we would like to seek further information from industry about:</p> <ul style="list-style-type: none"> (i) how this concept should be defined; and (ii) what kinds of financial products and markets counterparty spreads may apply to. 	<p>Recommendation 24 not adopted for disclosure of counterparty spreads.</p> <p>Proposal B7 not implemented.</p> <p><i>Rationale:</i> See the rationale for proposal B5 above for our response to feedback.</p>
<p>Changing the treatment of performance fees</p> <p>Removing the distinction between performance fees and performance-related fees</p>	<p>Recommendation 24: Apply the characterisation methodology in Chapter 7.3 of REP 581 for dealing with ‘performance fees’.</p> <p><i>Rationale:</i> From a consumer perspective, it should not matter whether a performance fee is incurred at the product level or in an underlying investment vehicle: see REP 581 at page 143.</p>	<p>Proposal B8(a): To remove any distinction between performance fees and performance-related fees, so that performance fees will include amounts calculated by reference to performance of a product, part of a product, an interposed vehicle or part of an interposed vehicle.</p> <p>Proposal B8(b) explains how we propose to give effect to this proposal.</p>	<p>Recommendation 24 adopted for disclosure of performance fees.</p> <p>Proposal B8 implemented.</p> <p><i>Rationale:</i> Industry feedback was generally supportive of this proposal. Consumer testing did not test this proposal.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
<p>Changing the treatment of performance fees</p> <p>Calculating performance fees</p>	<p>Recommendation 24: Apply the characterisation methodology in Chapter 7.3 of REP 581 for dealing with ‘performance fees’.</p> <p>REP 581 recommends:</p> <ul style="list-style-type: none"> calculating performance fees by reference to a longer term average to reduce the likelihood of large differences between the disclosed amounts of performance fees and the actual outcome (see REP 581 at page 143); and average calculation should be able to accommodate any negative (clawback) figures for individual years, although the calculated average figure itself should not be negative (see REP 581 at page 142). <p><i>Rationale:</i> Disclosure of an average amount provides more reliable information for consumers due to the volatility of performance fees and because past performance is not an indicator of future performance: see REP 581 at pages 141–2.</p>	<p>Proposal B9(a): To require that:</p> <ol style="list-style-type: none"> the amount of performance fees to be included in the ‘Fees and costs template’ as part of investment fees for superannuation products (to be renamed ‘investment fees and costs’) and management costs for managed investment products (to be renamed ‘management fees and costs’) will be calculated by reference to the average of the performance fees that accrued in the product, option, interposed vehicle or part in each of the previous five financial years; where a product, option, interposed vehicle or part was not in operation for the previous five financial years, or did not have a performance fee charging mechanism in place for the full five financial years, the average should be calculated by reference to the number of financial years in which it operated or had a performance fee charging mechanism in place; and where a product, option or interposed vehicle or part was first offered in the current financial year, the performance fee should be calculated by reference to the issuer’s reasonable estimate of the performance fee for the current financial year. <p>Proposal B9(b) explains how we propose to give effect to these proposals.</p>	<p>Recommendation 24 adopted for the characterisation methodology applied to disclosure of performance fees.</p> <p>Recommendation 24 not adopted for the treatment of negative performance fees.</p> <p>Proposal B9 mostly implemented, except to the extent these proposals do not allow disclosure of a negative performance fee. We have implemented an amended version of the proposal that requires cross-referencing to the ‘Additional explanation of fees and costs’.</p> <p><i>Rationale:</i> Industry generally agreed with the proposal on how to calculate or estimate performance fees, but expressed mixed views about the treatment of negative performance fees. Some respondents considered that negative amounts should be disclosed and that disclosing negative amounts as zero would be misleading. We did not consumer test this proposal. We consider that requiring a negative performance fee to be disclosed as zero may be misleading: see paragraphs 61–64 of this report.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
<p>Changing the treatment of performance fees</p> <p>Disclosing performance fees</p>	<p>Recommendation 24: Apply the characterisation methodology in Chapter 7.3 of REP 581 for dealing with ‘performance fees’.</p> <p>REP 581 proposed two layout options by treating performance fees as Category 1 in the ‘Fees and costs template’:</p> <ul style="list-style-type: none"> • as a separate line item—separate from the more forward-looking fees; or • as a sub-element of other fee lines and using standardised footnotes to explain the calculation and potential impact (see REP 581 at page 144). <p><i>Rationale:</i> Disclosure of this information will improve the disclosure of performance fees and help consumers understand how performance fees may impact their investment without requiring the issuer to provide too much information and will be closer to some existing disclosure practices: see REP 581 at page 144.</p>	<p>Proposal B10(a): To require the ‘Fees and costs templates’ (now to be called the ‘Fees and costs summaries’) for both superannuation products and managed investment products to contain an additional footnote referring to performance fees in the form illustrated by footnote 1 of Figure 2, Figure 9 and Example 1 in draft updated RG 97.</p> <p>Proposal B10(b): To maintain the requirements for the ‘Additional explanation of fees and costs’ (to be renamed ‘Fees and costs details’) as set out in cls 209(b)(i) and (ii) of Sch 10, but with some amendments to clarify the operation of cl 209(b)(ii) of Sch 10.</p> <p>Proposal B10(c): To amend cl 209(b)(iii) of Sch 10 to require the ‘Additional explanation of fees and costs’ (to be renamed ‘Fees and costs details’) to set out the calculated average performance fees for each product, option, interposed vehicle or part under cl 101C(3)(a) of Sch 10.</p> <p>Proposal B10(d): To allow issuers to set out related performance information in the ‘Additional explanation of fees and costs’ (to be renamed ‘Fees and costs details’) if they choose to do so.</p> <p>Proposal B10(e): To allow issuers to set out a further explanation in the ‘Additional explanation of fees and costs’ (to be renamed ‘Fees and costs details’), in circumstances where the issuer believes that the average figure based on the previous five financial years is not representative for the coming period (requiring entities to disclose performance fee information in a footnote).</p>	<p>Recommendation 24 applied to the disclosure of performance fees.</p> <p>Proposal B10(a):</p> <ul style="list-style-type: none"> • implemented for superannuation PDS disclosure • implemented with amendments for managed investment PDS disclosure—to require a new single line item for performance fees in the ‘Fees and costs summary’, and the amount of performance fees to be included in the ‘Example of annual fees and costs’. <p><i>Rationale:</i> Although a single line item was not consulted on in CP 308 or consumer tested, and REP 581 preferred the use of standardised footnotes, we consider disclosure by separate line item for managed investment products will highlight the impact of performance fees on investment and enhance transparency and comparability. We also note that consumer testing did not favour the use of footnotes as a general proposition: see paragraphs 65–67 of this report and REP 638 at pages 14, 19 and 33.</p> <p>Proposals B10(b)–(e) implemented.</p> <p><i>Rationale:</i> Feedback was generally supportive of these proposals. Consumer testing did not test these proposals.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
<p>Clarifying the treatment of costs paid out of reserves for superannuation products</p>	<p>Recommendation 30: Review the definition of ‘administration fees’ in cl 209A of Sch 10 to clarify the position on costs paid out of reserves.</p> <p><i>Rationale:</i> The current drafting of the definition works adequately for retail funds but does not fit well with the structure of ‘for member profit funds’ that use reserves. The disclosure regime should apply to fees and costs regardless of their source, payment method or characterisation: see REP 581 at page 156.</p>	<p>Proposal B11(a): To amend cl 209A of Sch 10 to clarify the position on costs paid out of reserves.</p> <p>Proposal B11(b): To give effect to this proposal by amending the definitions of investment fee (to be renamed ‘investment fees and costs’) and administration fee (to be renamed ‘administration fees and costs’) in cl 209A of Sch 10, to make it clear that these fees and costs include costs met through the use of reserves. It would require entities to include costs met using reserves in administration fees and costs.</p>	<p>Recommendation 30 adopted.</p> <p>Proposal B11(a)–(b) implemented, with amendments, to address the issue of double counting.</p> <p><i>Rationale:</i> We consider that clarifying that costs paid out of reserves are captured by the fees and costs disclosure requirements will promote product comparability. To address concerns raised by industry about double counting, issuers of superannuation products must disclose costs debited from reserves that are in excess to amounts credited to the reserves during the period. Consumer testing did not test this proposal: see paragraphs 68–71 of this report.</p>
<p>Drafting clarification</p>	<p>Recommendation 33: The opening words of cl 301(2) of Sch 10 ‘The amount inserted must include...’ have become separated from the clause they relate to (i.e. cl 301(1)) after the insertion of cls 1A to 1E. Presumably the words relate to ‘Indirect costs of your investment’ in cl 301(1) and drafting should be adjusted accordingly.</p>	<p>Proposal B12(a): To make minor amendments to the structure of cl 301 of Sch 10 to realign cl 301(2) with cl 301(1).</p> <p>Proposal B12(b) describes how we will give effect to this proposal.</p>	<p>Recommendation 33 adopted.</p> <p>Proposal B12 implemented.</p> <p><i>Rationale:</i> Industry feedback supported this proposal. Consumer testing did not test this proposal.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
<p>Clarifying requirements for tax treatment in PDSs (proposed guidance)</p>	<p>No specific recommendation made.</p>	<p>We did not consult on specific proposals in CP 308 about the tax treatment in PDS disclosure. However, we included guidance in draft updated RG 97 to clarify that fees and costs in a PDS must be disclosed on a gross basis, to address inconsistent industry tax treatment in PDS disclosure.</p> <p>We conducted limited further consultation about proposed guidance to clarify tax treatment in PDSs.</p>	<p>Proposed guidance included to clarify tax treatment under the existing fees and costs disclosure requirements for PDSs. We have</p> <ul style="list-style-type: none"> • amended the guidance in RG 97 to make it explicit how fees and costs should be disclosed; and • modified Sch 10 to expressly require that the total fees and costs paid are to be presented gross of tax. <p><i>Rationale:</i> Feedback from limited further stakeholder consultation was mixed on this proposed guidance. We consider that consistent tax treatment is critical. To promote comparability, disclosure should reflect the true cost of operating the superannuation fund or managed investment scheme: see paragraphs 47–50 of this report.</p>

Proposals not requiring amendments to Sch 10

89 Section C of [CP 308](#) contained proposals to implement recommendations in [REP 581](#) that do not require amendments to Sch 10. We generally agreed with the rationale behind the REP 581 recommendations and followed the recommendations in making these proposals. Most proposals in Section C of CP 308 received broad support from industry and consumer testing, and have been implemented as proposed.

Table 3: Proposals not requiring amendments to Sch 10

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
Consumer testing of some proposed changes	<p>Recommendation 12: Consumer test the ‘Fees and costs summaries’ for superannuation products and managed investment products and for the merging of ‘administration fees’ with ‘investment fees’.</p> <p>Recommendation 15: Consumer test possible name changes of the ‘Additional explanation of fees and costs’ to ‘Fees and costs details’ and ‘Fees and costs template’ to ‘Fees and costs summary’.</p> <p><i>Rationale:</i> Consumer testing may show if it is useful to merge fees and whether the proposed name changes are more consumer friendly: see REP 581 at pages 100 and 107.</p>	<p>Proposal C1(c)–(d): To change the name of:</p> <ul style="list-style-type: none"> the ‘Fees and costs template’ to the ‘Fees and costs summary’; and the ‘Additional explanation of fees and costs’ to the ‘Fees and costs details’. 	<p>Recommendation 12 adopted.</p> <p>Recommendation 15 adopted.</p> <p>Proposal C1(c) implemented—to change the name of the ‘Fees and costs template’.</p> <p>Proposal C1(d) not implemented—to change the name of ‘Additional explanation of fees and costs’.</p> <p><i>Rationale:</i> Consumer testing found that consumers had a clear preference for changing the name from the ‘Fees and costs template’ to the ‘Fees and costs summary’, but preferred the existing name of the ‘Additional explanation of fees and costs’ over the proposed ‘Fees and costs details’ for managed investment products. There was no clear preference between ‘Additional explanation of fees and costs’ or ‘Fees and costs details’ for superannuation products: see REP 638 at pages 31–32 and 41–42, and paragraphs 72–75 of this report.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
<p>Developing additional resources and information for consumers</p>	<p>Recommendation 28: Continue to refine the narrative about the importance and relevance of fees when making decisions about superannuation funds and managed investment products.</p> <p><i>Rationale:</i> Information and educational material for consumers needs to go further than just emphasising that fees are important. They should explain:</p> <ul style="list-style-type: none"> • the relevance of fees, costs and other factors in the context of different decisions; • the nature and composition of fees and costs; and • how to use the disclosure tools to support decision making (see REP 581 at page 155). 	<p>Proposal C2: After the amendments to the fees and costs disclosure regime have been finalised, we propose to undertake further work to refine the consumer-facing narrative about the importance and relevance of fees and costs when making decisions about superannuation products and managed investment products.</p> <p>This may include producing information and educational material (including for MoneySmart) and working with industry (e.g. to develop a consumer tool). It is important that any narrative and related information and resources focus not only on fees and costs, but also identify fees and costs as one factor, but not the sole consideration, in choosing a product.</p>	<p>Recommendation 28 adopted.</p> <p>Proposal C2 adopted.</p> <p>We will undertake work to refine the consumer-facing narrative after amendments to the fees and costs disclosure regime have been released and before the end of the transitional period.</p> <p><i>Rationale:</i> Industry and consumer testing supported this proposal. We consider that it is important to ensure that consumers understand the importance and relevance of fees and costs.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
<p>Working with industry bodies on choice of product advice</p>	<p>Recommendation 29: Continue to refine the narrative about the importance and relevance of fees when making decisions about superannuation funds and managed investment products. ASIC should continue to work with industry and other stakeholders to help disseminate consistent messages.</p> <p><i>Rationale:</i> Advisers need clarification about how to factor fees and costs disclosure information into their advice to clients: see REP 581 at page 156.</p>	<p>Proposal C3: After the amendments to the fees and costs disclosure regime have been finalised, we propose to work with industry bodies that represent advisers to clarify how fees and costs disclosure should be used when giving advice about choice of products.</p>	<p>Recommendation 29 adopted.</p> <p>Proposal C3 adopted.</p> <p>We will work with industry bodies on choice of product advice after the amendments to the fees and costs disclosure regime have been released and before the end of the transitional period.</p> <p><i>Rationale:</i> Industry agreed with this proposal. This proposal was not consumer tested. We consider it is important that advisers understand how to use fees and costs disclosure information when preparing financial product advice for their clients. If the fees and costs information about a product in a Statement of Advice is not accurate or is incomplete, it may affect the consumer’s ability to compare products and make informed, value-for-money decisions: see CP 308 at paragraph 124.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
<p>Explaining why fees and costs must be disclosed</p>	<p>Recommendation 23: Revisit the drafting of RG 97 and set out more explanation of the objectives and context of fees and costs disclosures so that the meaning is more accessible to users.</p> <p><i>Rationale:</i> The requirements are technically complex and difficult to understand: see REP 581 at page 117.</p>	<p>Proposal C4: To explain the purpose and context of the fees and costs disclosure regime, so the intent of the regime is clear and the meaning more accessible to users by amending RG 97, which will set out our views on why fees and costs must be disclosed in PDSs and periodic statements.</p>	<p>Recommendation 23 adopted.</p> <p>Proposal C4 implemented.</p> <p>RG 97 has been revised to explain why fees and costs must be disclosed.</p> <p><i>Rationale:</i> It is important that we and industry have a shared understanding of the purpose of fees and costs disclosure. This will guide further policy developments, and give direction to issuers making decisions about fees and costs disclosure, in circumstances where applying the law requires them to make judgements: see CP 308 at paragraph 125.</p>
<p>Guidance on including a prominent statement in the 'Fees and costs template' for platforms</p>	<p>Recommendation 20: Work with industry to further improve consistency in the location and expression, in the PDS 'Fees and costs template' of platforms, of a prominent statement that the fees and costs of the platform relate to access to the investments on the list, not the costs within those investments. Consider positioning of the statement within the 'investment fees' or 'management costs' line, with a cross-reference to the location of the 'Cost of product' figure.</p> <p><i>Rationale:</i> Consumers and their advisers need to appreciate the double layer of fee impact and disclosure. Greater consistency in the way the prominent statement is presented will help consumers to compare products: see REP 581 at pages 113–115.</p>	<p>Proposal C5: To help platform operators ensure that a PDS is not misleading by including guidance in the updated RG 97 that:</p> <ul style="list-style-type: none"> (a) platform operators include a prominent statement in the 'Fees and costs template' indicating that the fees and costs charged by the platform relate only to gaining access to the accessible financial products and do not include the fees and costs that may be charged by the issuers of accessible financial products; and (b) retain the current guidance in RG 97 on prominent statements that should be included after the 'Example of annual fees and costs', and including other examples that illustrate the combined effect of the fees and costs of the platform and accessible financial products. 	<p>Recommendation 20 adopted.</p> <p>Proposal C5 implemented.</p> <p><i>Rationale:</i> Industry generally supported this proposal. We consider this guidance may help consumers compare products.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
<p>Clarifying in RG 97 the treatment of amounts paid by third parties or offset against other amounts</p>	<p>Recommendation 26: Clarify in RG 97 the principles relating to, and disclosure required for, payments of fees, costs and other amounts by third parties.</p> <p><i>Rationale:</i> The principles and the impact of payments to third parties is not immediately obvious from reading RG 97 or Sch 10: see REP 581 at 148–9.</p>	<p>Proposal C6: To include guidance to clarify the principles relating to, and the treatment of, fees, costs and other amounts paid by third parties or offset against other amounts: see draft updated RG 97 at RG 97.276–RG 97.279, and RG 97.407–RG 97.411.</p>	<p>Recommendation 26 adopted.</p> <p>Proposal C6 implemented.</p> <p><i>Rationale:</i> Industry generally supported this proposal. We consider it is important that RG 97 includes guidance about the treatment of amounts paid by third parties or offset against other amounts—including fees or costs funded by a tax deduction—to help consumers:</p> <ul style="list-style-type: none"> • understand the true costs of operating a fund; • compare products; and • make informed, value-for-money decisions (see CP 308 at paragraphs 130–133).

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
Periodic statement content for defined benefit members	<p>Recommendation 32: Apply the special requirements set out in RG 97 relating to members of a ‘pure defined benefit superannuation fund’ (a term defined in RG 97) to the periodic statements of all defined benefit members regardless of whether the fund of which they are a member also has defined contribution members.</p> <p><i>Rationale:</i> As some superannuation entities have defined benefit members and defined contribution (accumulation) members, the guidance should apply to the periodic statements of all defined benefit members, regardless of whether the superannuation entity also has accumulation members: see REP 581 at page 156–7.</p>	<p>Proposal C7: To update our guidance on periodic statements for defined benefit superannuation entities, so the guidance applies to any defined benefit member in a superannuation entity, instead of only to superannuation entities where all members are defined benefit members.</p>	<p>Recommendation 32 adopted.</p> <p>Proposal C7 implemented.</p> <p>RG 97 has been updated to clarify that the guidance applies to any defined benefit member in a superannuation entity.</p> <p><i>Rationale:</i> Industry supported this proposal. It was not consumer tested.</p>
Consistent presentation of fee information in the ‘Fees and costs template’	<p>Recommendation 3: Work with industry to improve consistency in the way that fee information is set out in the fee templates.</p> <p><i>Rationale:</i> Fee information needs to be unqualified, simple and directly comparable for it to be usable by consumers. The ‘Fees and costs template’ does not allow effective comparison across products or issuers: see REP 581 at pages 90–4.</p>	<p>Proposal C8: To update guidance in RG 97 to improve consistency in the way fees and cost information is set out in the ‘Fees and costs summary’.</p>	<p>Recommendation 3 adopted.</p> <p>Proposal C8 implemented.</p> <p>RG 97 has been updated to improve consistency in the way fees and costs information is set out in the ‘Fees and costs summary’.</p> <p><i>Rationale:</i> Industry supported this proposal. It was not consumer tested.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
<p>Reducing differences between superannuation product and managed investment product fee disclosure</p>	<p>Recommendation 5: As a subsidiary objective, reduce or eliminate the differences between fees and costs disclosure appearing in PDSs for managed investment products and superannuation products when making future changes to layout of the disclosure tools or the underlying data, including how and whether to implement other recommendations.</p> <p><i>Rationale:</i> The reduction or elimination of differences in the layout and content of the 'Fees and costs templates' for managed investment products and superannuation products would materially facilitate comparisons and simplify disclosure for superannuation entities that invest in managed investment products: see REP 581 at pages 95–6.</p>	<p>Proposal C9: We do not have any separate proposals to progress at this time regarding this recommendation.</p> <p><i>Rationale:</i> We consider that implementing the proposals in CP 308 will significantly reduce or eliminate the differences between fees and costs disclosure appearing in PDSs and periodic statements of managed investment products and those of superannuation products.</p>	<p>Recommendation 5 adopted.</p> <p>Proposal C9 adopted.</p> <p>We will not introduce any additional proposals to reduce differences between fees and costs disclosure requirements for managed investment products and superannuation products at this time.</p> <p><i>Rationale:</i> Industry generally supported this proposal. The proposal was not consumer tested.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
<p>Making a consolidated version of Sch 10 available on ASIC's website</p>	<p>Recommendation 22: Make publicly available on ASIC's website a version of Sch 10 that consolidates the amendments made by the various ASIC instruments.</p> <p><i>Rationale:</i> Industry do not understand what is required of them or cannot find the law they have to comply with. This problem is exacerbated by sequential modifications to these requirements by ASIC instruments and the absence of a consolidated version of Sch 10, as modified by the various ASIC instruments: see REP 581 at page 117–18.</p>	<p>Proposal C10: After the amendments to the fees and costs disclosure regime are finalised:</p> <p>(a) amend [CO 14/1252] to repeal and replace Sch 10 in its entirety, so that Sch 10 (as modified by [CO 14/1252]) is set out in a single document; and</p> <p>(b) include a link to [CO 14/1252] on the fees and costs section of our website.</p>	<p>Recommendation 22 adopted.</p> <p>Proposal C10 implemented.</p> <p>The full and complete version of Sch 10 that will apply from the end of the transitional period is set out in ASIC Corporations (Disclosure of Fees and Costs) Instrument 2019/1070. This has been made available from a link on ASIC's website to the Federal Register of Legislation.</p> <p>Industry can refer to [CO 14/1252] on the RG 97 landing page of ASIC's website.</p> <p><i>Rationale:</i> Industry generally supported this proposal. The proposal was not consumer tested. This proposal will make it easier for industry to identify and understand the fees and costs disclosure requirements: see CP 308 at paragraph 147.</p>
<p>Developing and implementing a surveillance strategy</p>	<p>Recommendation 27: Develop and implement a surveillance strategy on compliance with the Sch 10 disclosure requirements. The focus of this surveillance would be a matter for ASIC; however, many of the items discussed in REP 581 might suggest areas for particular attention.</p>	<p>Proposal C11: After the amendments to the fees and costs disclosure regime have been finalised and are in force, develop and implement a surveillance strategy to assess compliance with the fees and costs disclosure requirements.</p>	<p>Recommendation 27 adopted.</p> <p>Proposal C11 adopted.</p> <p><i>Rationale:</i> Surveillance is needed to ensure that the consumer objectives of the fees and costs disclosure requirements are not compromised, and to determine whether any non-compliance is arising from uncertainty or inadequate guidance: see CP 308 at paragraphs 148–149.</p> <p>Industry was generally supportive of this proposal, suggesting areas for surveillance focus.</p>

Recommendations we proposed not to adopt at this stage

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Section D of [CP 308](#) consulted on recommendations from [REP 581](#) that we did not propose to adopt at this stage.

Table 4: Recommendations we proposed not to adopt at this stage

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
Conducting a feasibility study into a consumer comparison tool	<p>Recommendation 1: Undertake a feasibility study into whether ASIC, or another government agency, could provide, or sponsor, the development of:</p> <ol style="list-style-type: none"> a publicly accessible, consumer-facing facility providing fees and costs information extracted from PDSs that can be searched and compared on a range of criteria; and/or data about average 'Cost of product' figures for specific investment option types that can be included as a reference figure in fee examples. <p>Recommendation 2: The feasibility study should also consider whether aggregated product-level or provider-level cost data can be provided—outside of PDSs—to support consumers who make provider-level or product-level choices.</p> <p><i>Rationale:</i> Given the complexity of making comparisons and the various limitations to PDS disclosure, the consumer decision-making process needs to be better supported: see REP 581 at page 87.</p>	<p>Proposal D1: We support the development of a publicly accessible, consumer-facing comparison tool. This task would require significant resources, so at this stage we do not propose to undertake a feasibility study into whether ASIC or another government agency could provide this tool. In addition, the Productivity Commission's Superannuation: Assessing Efficiency and Competitiveness Inquiry may affect these recommendations. We may reconsider these recommendations at a later date.</p>	<p>Recommendations 1 and 2 not adopted.</p> <p>Proposal D1 adopted.</p> <p><i>Rationale:</i> Although consumer groups were strongly in favour of ASIC developing a publicly accessible, consumer-facing comparison tool, it would be premature for ASIC to undertake a feasibility study pending Government consideration of the final report of the Productivity Commission, Superannuation: Assessing efficiency and competitiveness: see paragraphs 76–79 of this report.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
Platform disclosure	<p>Recommendation 17: The existing practice of showing fees and costs of the accessible managed investment scheme available through a platform within the platform's investment menu documents should be made a specific obligation in Sch 10. Standardised introductory text should be developed.</p> <p>Recommendation 18: The investment menu documents for platforms should also include abbreviated 'Cost of product' figures for accessible managed investment products, calculated in a manner that is, to the extent possible, consistent with the calculated figure referred to in recommendation 13 (including both platform level and managed investment scheme level fees and costs).</p> <p>Recommendation 19: Periodic statement disclosure obligations in Sch 10 should explicitly include the costs impacts of accessible investments in platforms. The manner of achieving this, so that it can be comprehensible to consumers, should be further considered in light of proposed and consequential improvements to periodic statements generally.</p> <p>Recommendation 20: Work with industry to further improve consistency in the location and expression, in the PDS fee template of platforms, of the prominent statement that the fees and costs of the platform relate to access to the investments on the list, not the costs within those investments. Consider positioning of the statement within the 'investment fees' or 'management costs' line. Provide a cross-reference to the location of the 'Cost of product' figure referred to in recommendation 18.</p> <p>Recommendation 21: After implementation of any resultant changes, review the practice and policy of disclosure of fees and charges for platform products. The review should focus on whether disclosure of fees and charges for platform-based products is adequately meeting the objective of providing consumers with information that they can use in making more confident and informed, value-for-money decisions when choosing investment options within platforms and when making product-level choices between platforms, managed investment products and superannuation products.</p>	<p>Proposal D2(a): At this stage, not to consult fully about adopting recommendations 17–21 on platform disclosure. However, at this time we would like to seek industry's preliminary feedback as to whether recommendations 17–20 should be made legal obligations.</p> <p><i>Rationale:</i> Proposal D2(a) is a significant undertaking that would delay the implementation of the other proposals in CP 308. We are currently undertaking work on platforms so we can better understand the risks and harms associated with their operation. We intend to commence a more focused review of fees and costs in platforms after the release of our revised RG 97.</p> <p>Proposal D2(b): At this stage, in relation to recommendation 19 (showing the cost impacts of accessible financial products in periodic statements for platforms), to include the guidance from question 6 of the ASIC Q&As in RG 97 (see draft updated RG 97 at RG 97.260–RG 97.266).</p> <p>Proposal D2(c): At this stage, in relation to recommendation 20 (positioning of a prominent statement in the 'Fees and costs template' for platforms), to include guidance in updated RG 97 (see proposal C5).</p>	<p>Recommendations 17–21 only partially adopted: see proposal C5.</p> <p>Proposal D2 has been adopted, with full consultation on platforms deferred.</p> <p>Guidance has been provided in RG 97 from question 6 of the ASIC Q&A, including positioning of a prominent statement.</p> <p><i>Rationale:</i> Industry expressed mixed views about deferring consultation about platform disclosure recommendations at this stage. We have deferred full consultation about fees and costs disclosure for platforms for the reasons set out in CP 308. Findings from our other work on platforms will inform future proposals on fees and costs disclosure for platforms: see paragraphs 80–82 of this report.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
<p>Consistency in the way fees and costs information is incorporated by reference</p>	<p>Recommendation 4: Work with industry to improve consistency in the way that fee information is incorporated by reference, particularly for cross-referencing in the fee template, and the location and format of presentation. It may be possible to develop industry standards or best practice statements that can deliver improved levels of consistency of practice.</p> <p><i>Rationale:</i> There is diversity in the way industry incorporate by reference fees and costs information. The way it is done can make it difficult for consumers to even find the relevant document(s) or the relevant fees and costs disclosure: see REP 581 at page 94.</p>	<p>Proposal D3: To not introduce legal requirements or include additional guidance dealing with consistency in the way fees and costs information is incorporated by reference in PDSs; however, we intend to work with industry on this in future. We sought feedback on whether industry could develop standards or best practice guidelines to improve consistency, and how we might contribute to this process.</p> <p><i>Rationale:</i> Following the consultation process, if industry standards or best practice guidelines are not put in place, we may consider introducing legal requirements or inserting further guidance in RG 97 and Regulatory Guide 168 <i>Disclosure: Product Disclosure Statements (and other disclosure obligations)</i> (RG 168): see CP 308 at paragraphs 165–166.</p>	<p>Recommendation 4 adopted.</p> <p>Proposal D3 adopted.</p> <p>We will work with industry in the future on consistency of incorporation by reference.</p> <p><i>Rationale:</i> Industry supported this proposal. It was not consumer tested. We consider that greater consistency in the way fees and costs information is incorporated by reference into PDSs may make fees and costs information more usable for consumers, and may help them make more informed, value-for-money decisions.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
<p>Changing indirect cost ratio to indirect costs in the 'Fees and costs template' for superannuation products</p>	<p>Recommendation 7: If the line 'indirect cost ratio' is retained as a separate line item in the superannuation 'Fees and costs template', change the description of the 'indirect cost ratio' line in cl 201 of Sch 10 to 'indirect costs'.</p> <p><i>Rationale:</i> Consumers are unlikely to know what to do with this ratio in relation to the fees and costs set out above it. If the indirect cost ratio is ultimately retained as a separate line item, it would be simpler to refer to indirect costs (rather than indirect cost ratio) in the template.</p>	<p>Proposal D4: Instead of changing indirect cost ratio to indirect costs in the 'Fees and costs template' for superannuation products, to adopt recommendation 11 of REP 581 (proposal B1).</p> <p><i>Rationale:</i> By adopting recommendation 11 of REP 581 (see proposal B1), we will remove the distinction between investment fees and indirect costs, and administration fees and indirect costs. As indirect costs will no longer be a separate line item in the 'Fees and costs template', recommendation 7 is redundant: see CP 308 at paragraphs 167–168.</p>	<p>Recommendation 11 adopted (see proposal B1), instead of recommendation 7.</p> <p>Proposal D4 adopted.</p> <p><i>Rationale:</i> Industry supported this proposal. Consumers preferred merging the indirect cost ratio into investment fees rather than disclosing it separately.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
<p>Explaining transactional and operational costs to consumers within the context of information about returns</p>	<p>Recommendation 25: Over the longer term, consider whether, and how, transactional and operational costs could be better explained to consumers within the context of information about returns.</p> <p><i>Rationale:</i> As transactional and operational costs are related to the narrative about returns, information about elements such as market impact costs and operational costs might be better understood by consumers within information and analysis about returns and return attribution. Greater reliance could be placed on benchmark or market average calculations, reducing the effort involved in data collection and calculation: see REP 581 at page 139.</p>	<p>Proposal D5: At this stage, we do not propose to consider whether and how transactional and operational costs could be better explained to consumers within the context of information about returns.</p> <p><i>Rationale:</i> Given the number of proposals in CP 308 that may affect disclosure of transactional and operational costs, we do not believe it is the appropriate time to consider this recommendation: see CP 308 at paragraph 170.</p>	<p>Recommendation 25 not adopted at this stage.</p> <p>Proposal D5 adopted.</p> <p>We will not consider—at this time—whether and how transactional and operational costs can be better explained to consumers within the context of information about returns.</p> <p><i>Rationale:</i> Industry had mixed views on how to best explain transactional and operational costs to consumers. Consumer testing recommended a ‘keep it simple’ approach with concise definitions in plain language in the glossary of key terms supported by an example. We may reconsider this recommendation in the future after the revised fees and costs disclosure requirements have commenced.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
Calculating and disclosing performance fees	Recommendation 31: Revisit drafting of parts of Sch 10 and RG 97 relating to the calculation and disclosure of performance fees to clarify the intention that generally performance fees and performance-related fees for managed investment products are calculated by reference to the previous financial period.	<p>Proposal D6: We do not propose to adopt the recommendation on calculating and disclosing performance fees because we propose to insert new provisions into Sch 10 and guidance in updated RG 97 on performance fees: see proposals B8–B10.</p> <p><i>Rationale:</i> As we are proposing a new regime for performance fees in CP 308 (see proposals B8–B10), we consider recommendation 31 is now redundant: see CP 308 at paragraph 173.</p>	<p>Recommendation 31 not adopted.</p> <p>Proposal D6 adopted—to not adopt recommendation 31 of REP 581.</p> <p><i>Rationale:</i> Industry supported this proposal. It was not consumer tested. We have inserted new provisions into Sch 10 and new guidance in RG 97 on performance fees: see proposals B8–B10.</p>
Clarifying the drafting in cl 303(2) of Sch 10	Recommendation 34: To better reflect the intention of the drafting, cl 303(2)(d) of Sch 10 should be amended so that cls 303(2)(d)(i) and (ii) are in the alternate rather than the conjunctive.	<p>Proposal D7: We do not propose to adopt this recommendation to clarify the drafting in cl 303(2) of Sch 10 because we consider this recommendation is now not necessary.</p> <p><i>Rationale:</i> As we propose to make amendments to periodic statements under recommendation 16 (see proposal B4), which will include requiring transaction costs to be shown in periodic statements in ‘Fees and costs deducted from your investment’ under cl 301(1A), we consider recommendation 34 is now redundant: see CP 308 at paragraph 175.</p>	<p>Recommendation 16 adopted, instead of recommendation 34.</p> <p>Proposal D7 adopted—to not adopt recommendation 34 of REP 581.</p> <p><i>Rationale:</i> Industry supported this proposal. Consumer testing was not conducted on this proposal. We have made amendments to requirements for periodic statements under recommendation 16 (see proposal B4) and consider recommendation 34 is now redundant.</p>

Area for reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
<p>Observations for the future</p>	<p>Observations for future at pages 157–8 of REP 581: Given the complexities consumers face when factoring cost impacts into the decision-making process, the complexity of information they have available to them and the limitations of supporting tools, ASIC should consider:</p> <ul style="list-style-type: none"> • how fees and costs information and disclosure could be approached in a way that better supports decision making; and • that future directions include more layering of information, more modular and tailored presentation, less segregated presentation and more accessible delivery of fees and costs information. 	<p>Proposal D8: At this stage, we do not propose to address or consider the observations for the future discussed at pages 157–8 of REP 581.</p> <p><i>Rationale:</i> These observations might assist consumers and make the disclosure regime more practicable for industry. However, due to the number of changes that are proposed in CP 308—and the time and effort required by industry to implement these proposed changes—we consider that these observations should not be considered on an industry-wide basis at this stage. In addition, implementing any changes to give effect to these observations may require Government action, and may be affected by the Productivity Commission’s Superannuation: Assessing Efficiency and Competitiveness Inquiry, and any future Government response to that inquiry: see CP 308 at paragraphs 179–180.</p>	<p>Proposal D8 adopted.</p> <p>We will not address or consider observations for the future discussed at pages 157–8 of REP 581, <i>other than</i> to provide clear messages in RG 97 about the benefits of more innovative forms of disclosure that are tailored to consumers in a way that best meets their needs.</p> <p><i>Rationale:</i> Industry supported this proposal. Consumer testing was not conducted on this proposal. Pending the Government’s response to the final report of the Productivity Commission, Superannuation: Assessing efficiency and competitiveness, and for the reasons set out in CP 308 at paragraphs 179–180, we do not consider these observations should be considered on an industry-wide basis at this stage.</p>

Additional proposals

91 Section E of [CP 308](#) contained additional proposals.

Table 5: Additional proposals

Area of reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
Removing the indirect cost ratio concept	<p>No specific recommendation.</p> <p>Recommendation 11 (see proposal B1 in CP 308) impacts proposal E1.</p>	<p>Proposal E1: If recommendation 11 (proposal B1) is implemented, we propose to remove the concept of indirect cost ratio from Sch 10.</p> <p><i>Rationale:</i> Proposal B1, which arises from recommendation 11, removes indirect costs and the indirect cost ratio as visible line items in the ‘Fees and costs template’ for superannuation products and in the ‘Example of annual fees and costs’. If we add indirect costs to the other amounts that make up management costs for managed investment products, an indirect cost ratio becomes unnecessary and its removal will simplify the fees and costs disclosure requirements and make the regime more practicable for industry: see CP 308 at paragraphs 183–186.</p>	<p>Recommendation 11 adopted and proposal B1 implemented.</p> <p>Proposal E1 implemented—by removing the concept of indirect cost ratio.</p> <p><i>Rationale:</i> Industry supported the proposal. Consumers found the indirect costs ratio extremely difficult to understand and supported proposal B1 to merge the indirect cost ratio concept into indirect costs in investment fees.</p>

Area of reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
Treatment of derivative financial products	No specific recommendation, but suggested that we consider how disclosure of over-the-counter (OTC) derivative costs can be aligned between managed investment products and superannuation products, in light of directions agreed on other recommendations: see REP 581 at page 139.	<p>Proposal E2(a): To maintain the current requirements for the treatment of costs associated with derivative financial products as indirect costs, in cls 101A(3) and (4) of Sch 10.</p> <p>Proposal E2(b): To include certain costs as transaction costs (see proposal B5 in relation to disclosing transaction costs as a line item in the 'Fees and costs template').</p> <p>Proposal E2(c) explains how we will give effect to these proposals.</p> <p><i>Rationale:</i> To seek industry feedback about how disclosure requirements should be aligned.</p>	<p>Proposal E2(a)–(b) adopted. We have maintained the present treatment of derivative financial products.</p> <p><i>Rationale:</i> Industry expressed mixed views about this proposal, but generally supported aligning requirements so that they are the same for managed investment products and superannuation products. This proposal was not consumer tested. We have maintained the status quo to preserve the protections intended by the PYSP regime relating to the calculation of indirect costs: see paragraphs 83–85 of this report.</p>

Area of reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
Changing the structure and content of RG 97	No specific recommendation.	<p>Proposal E3(a): To restructure RG 97 so that it is logical and easy to follow.</p> <p>Proposal E3(b): To redraft RG 97 to more clearly explain the fees and costs disclosure requirements.</p> <p>Proposal E3(c): To remove content in RG 97 that we consider does not help industry clearly understand its obligations, or where we consider the guidance in other sections of RG 97 is sufficient.</p> <p>Proposal E3(d): To incorporate the ASIC Q&As on our website into RG 97 where we believe the guidance will be helpful, and remove the ASIC Q&As from our website.</p> <p><i>Rationale:</i> We consider it is crucial that industry understand its obligations under the fees and costs disclosure requirements. RG 97 should be designed and structured so that it can be clearly understood by all levels of the market (including new entrants), staff members and officers, and service providers (such as lawyers, custodians, superannuation entity administrators, auditors and accountants): see CP 308 at paragraphs 190–191.</p>	<p>Proposal E3(a)–(d) implemented.</p> <p>We changed the structure and content of RG 97 by providing clearer explanations and removing confusing content.</p> <p><i>Rationale:</i> Industry supported this proposal and found the draft updated RG 97 provided guidance that was clearer and more capable of implementation. Consumer testing did not test the proposal; however, we consumer tested some definitions.</p>

Area of reform	REP 581 recommendation	CP 308 proposal	REP 637—ASIC response
Minor drafting amendments	No specific recommendation.	<p>Proposal E4: In the course of reviewing the recommendations made in REP 581, we identified</p> <ul style="list-style-type: none"> (a) some other provisions of Sch 10 that could be amended to improve the clarity of the fees and costs disclosure requirements; and (b) potential amendments to the definitions of activity fee, advice fee, buy–sell spread, exit fee, insurance fee and switching fee for superannuation products in cl 101 of Sch 10, to remove the cross-references to s29V of the <i>Superannuation Industry (Supervision) Act 1993</i> (SIS Act) and make them stand-alone definitions. <p><i>Rationale:</i> Creating stand-alone definitions for these fees in Sch 10 permits the new fee names to be used and makes Sch 10 self-contained, so it will no longer be necessary to cross-reference the SIS Act and will help make the fees and costs disclosure regime more practicable for industry: see CP 308 at paragraphs 192–195.</p>	<p>Proposal E4 implemented.</p> <p><i>Rationale:</i> Industry supported this proposal. Consumer testing did not test the proposal. The minor drafting amendments make the requirements in Sch 10 more practicable for industry.</p>