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**To:** Australian Securities and Investments Commission (ASIC)

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## **CS 39: Proposed change to stamp duty disclosure requirements**

The Business Council of Australia welcomes the opportunity to make this submission regarding the proposals outlined in *CS 39 Proposed change to stamp duty disclosure requirements*. We support ASIC's proposal to amend *ASIC Corporations (Disclosure of Fees and Costs) Instrument 2019/1070* to allow superannuation trustees to disclose stamp duty as an average amount over seven years.

We view this proposal as a necessary interim measure to address distortions in the market pending the broader review of Regulatory Guide 97 (RG 97) scheduled for the 2026-27 financial year. The current treatment of stamp duty as a transaction cost in fee disclosures has unintentionally created disincentives for investment in Australian real assets, potentially impacting national productivity and member outcomes.

### ■ Distortions Under Current Arrangements

Under the current disclosure regime, stamp duty is reported as a transactional and operational cost. Because stamp duty is a significant, lumpy, and irregular expense incurred at the point of acquisition, its inclusion as a one-off cost in annual fee summaries can misrepresent a fund's cost structure.

This creates a distortion against unlisted Australian assets, such as infrastructure and property, compared to asset classes that do not attract stamp duty or are domiciled in jurisdictions without comparable transaction taxes. Investors have observed that this regime effectively penalises funds for investing in Australian real assets by artificially inflating the disclosed fees in the year of acquisition.

Consequently, this creates an unlevel playing field. The current settings incentivise capital allocation toward offshore assets or listed securities where such transaction costs are not present or are disclosed differently. This regulatory friction risks diverting capital away from domestic greenfield projects, housing, and commercial precincts essential for economic growth.

### ■ Economic Implications

The implications of these disclosure settings extend beyond technical reporting to tangible economic outcomes. Recent research conducted by Mandala, for example, suggests that regulatory barriers, including the application of RG 97, could act as constraints on superannuation investment decisions.<sup>1</sup>

The BCA notes that their modelling suggests that addressing regulatory constraints on investment allocation could yield economic benefits. The research indicates that removing barriers to investment in growth assets and unlisted markets could potentially unlock capital for productivity-enhancing investment. Furthermore, the analysis suggests that optimising asset allocation by removing regulatory distortions could materially improve retirement balances for Australian workers.

It is consistent with the objective of the superannuation system to ensure that disclosure frameworks do not inadvertently discourage investments that maximise net returns for members.

### ■ Seven-Year Amortisation Proposal

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<sup>1</sup> Mandala, *Private Capital: Australia's untapped opportunity*, November 2025.

The proposal to amortise stamp duty over seven years is a pragmatic interim solution. Given that real assets are typically held for the long term, recognising the cost of stamp duty over a period of seven years aligns more closely with the investment horizon and the underlying economic reality of the asset.

This "smoothing" approach will mitigate the artificial spike in disclosed fees that currently occurs upon the acquisition of Australian real assets. This amendment will improve the comparability of products in tools such as the ATO's YourSuper comparison tool, ensuring that consumer decision-making is not distorted by temporary fluctuations caused by tax measures rather than fund manager efficiency.

■ Broader Review of RG 97

While the BCA supports the seven-year amortisation as an interim fix, we agree with ASIC's assessment that a broader review of RG 97 is required. The classification of stamp duty as a "fee" or "transaction cost" for disclosure purposes remains a fundamental conceptual issue.

There is an argument that taxes such as stamp duty should be decoupled from management fees and costs to provide better transparency. Treating unavoidable taxes as comparable to manager fees may continue to drive a focus on cost minimisation at the expense of net risk-adjusted returns. This issue requires further evaluation and consideration.

We urge ASIC to use the upcoming 2026-27 review to thoroughly reconsider the treatment of all non-discretionary transaction costs. The objective must be a disclosure framework that provides consumers with clear, comparable information without distorting capital allocation or discouraging investment in the Australian economy.

The Business Council of Australia supports the proposed amendment to Instrument 2019/1070 as a sensible interim measure to reduce market distortion.

Yours sincerely

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