Responsible Investment Association Australasia

Response – ASIC – Australia's evolving capital markets

28 April 2025

Overview

RIAA thanks the Australian Securities and Investment Commission (ASIC) for the opportunity to respond to Australia's evolving capital markets: A discussion paper on the dynamics between public and private markets (discussion paper).

Australia has strong market and financial regulations which underscore the strength and international regard for its financial systems and economy. However, the transition to a net zero economy requires the mobilisation of capital at an unprecedented scale to leverage the benefits of international capital flows and global investment opportunities.

Some regulatory and governance frameworks may no longer be fit-for-purpose or may have unintended consequences for sustainability outcomes, deterring the ability of the private sector to invest in the transition and impacting the integrity of the Australian markets.

RIAA welcomes the pro-active approach ASIC is taking to understand the emerging forces shaping Australia's capital markets – in doing so, working to ensure future regulatory settings are fit-for-purpose to support efficient allocation of capital and promote confident and informed participation within financial systems.

RIAA's response has been informed by the input of RIAA members and outlines whole-of-government solutions to address the concerns outlined in the discussion paper. RIAA thanks those RIAA members who contributed to the development of this response.

About RIAA

The Responsible Investment Association Australasia champions responsible investing and a sustainable financial system in Australia and Aotearoa New Zealand. It is dedicated to ensuring capital is aligned with achieving a healthy society, environment and economy.

RIAA represents

professionally managed funds in Australia

professionally managed funds in New Zealand

A$ 76 trillion

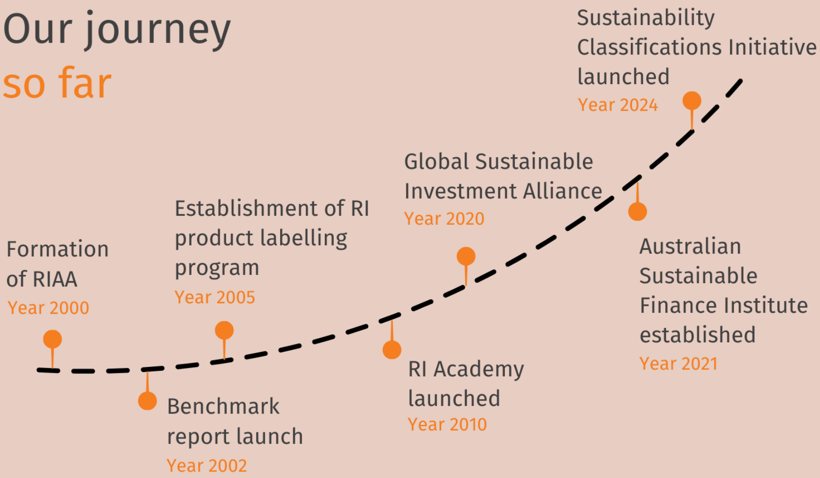
managed by our members in assets globally

CERTIFIED BY RIAA

World's longest running certification program for responsible investment products

340+ RIAA certified products

Our journey so far



10

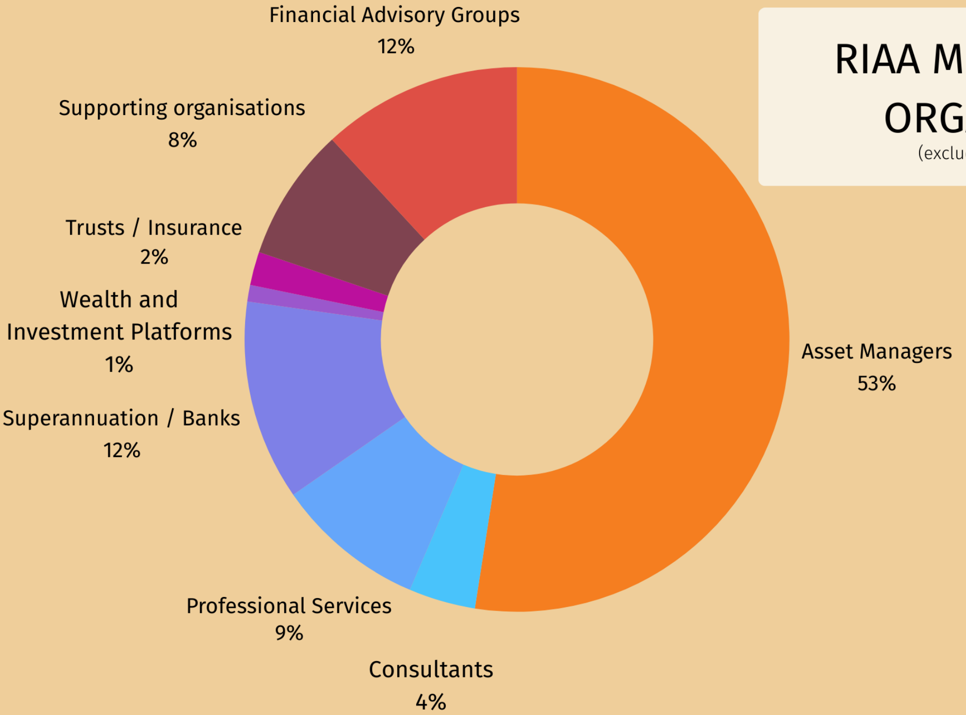
largest super funds by no. members / asset under management in Australia are RIAA members

10

largest KiwiSaver Funds by no. members are RIAA certified products

RIAA MEMBERSHIP BY ORGANISATIONS

(excludes individual members)



*as at September 2024

Context for RIAA's response

The discussion paper relates to the emerging role of private markets and the impact this has on the health of both public markets and capital markets more broadly. ASIC seeks to understand if intervention is required and invites insights and actionable ideas for ASIC, the broader regulatory system, and whole of industry to address potential issues. Therefore, RIAA's recommendations focus on addressing the issues raised to improve transparency and which may include actions that can be taken by ASIC independently or with other government bodies, such as the members of the Council of Financial Regulators. Transparency measures (especially key recommendation 1) should be implemented before ASIC (or other relevant bodies) come to a view on whether any intervention is required. Our recommendations relate to the ongoing improvement of Australian capital markets.

Private assets are central to responsible investing and have significant potential to address social and environmental challenges in areas such as such as health, housing and infrastructure as well as for the Government and investors to better leverage commercial arrangements such as blended finance. However, responsible investment is underscored by transparency, which is a central feature of responsible investment approaches. While there can be sensitive information within both public and private investment; there is a significant amount of information for which it is in the public good to be disclosed. If private assets are not able to be disclosed in a way that is consistent with responsible investment policies and practices, it becomes difficult for managers to include these assets in their responsible investment strategies without requiring a significant amount of additional disclosure/information.

RIAA cautions against removing barriers to access public markets to stimulate listings, particularly where there is no indication or evidence that the settings themselves have impacted on the decline in public activity. The discussion paper states that "ASIC does not see regulatory settings as the dominant factor driving listed equity activity in Australia, but there may be opportunities to adjust to improve the attractiveness of our markets."

Any change to existing regulatory settings to access public money must consider the reasonableness of those settings in order that the health of Australia's capital markets is ensured. While the following recommendations would involve new frameworks and obligations, these obligations (implemented following industry consultation) would improve the integrity of financial markets and would not create undue burden as private assets grow as a proportion of total managed assets.

Note

The discussion paper appears to broadly consider transparency in the private market in two distinct scenarios:

- general transparency, relating to what an end investor is able to access; and
- transparency during specific circumstances such as a tender process or material acquisition.

RIAA has focused on the need for general transparency and does not comment on disclosure during specific circumstances. True institutional investors (i.e. superannuation, family offices etc) are least likely to have transparency challenges as they can work with funds directly to access non-public information as part of their own due diligence process. General transparency needs to be improved for non-institutional and retail investors, as well as consumers.

In addition, the risks of reduced disclosure in private markets during transactions is heightened by the absence of general transparency. As such, improving general transparency may impact the need for, or the extent of, new transaction-related transparency measures. Any measures undertaken to regulate private markets should not fundamentally undermine the inherent benefits of transacting in private markets.

Key recommendations

1. Expand existing portfolio holdings disclosure (PHD) regime

Limitations of current PHD regime

1.1 RIAA strongly supported the introduction of portfolio holdings disclosure (PHD) for registerable superannuation trustees (RSEs) in the *Corporations Amendment (Portfolio Holdings Disclosure) Regulations 2021* (PHD Regulations). This was an important step to bring Australia closer to global leading disclosure practices and to make it easier for superfund members to compare products and identify the most suitable fund for them.

1.2 However, there remain significant limitations to the PHD requirements in Australia. These limitations both undermine the intent of the Regulations and fail to appropriately address growth and associated risk of private assets within superannuation investments and the broader managed investment industry. This is because:

a) The current PHD regime **applies only to the superannuation sector** with only RSEs required to publicly disclose their investment portfolios in line with the Regulations. This has created an outsized burden on RSEs and an adverse gap in disclosure between RSEs and the broader managed funds industry in Australia.

As at 30 June 2024, there were 67 APRA-regulated RSEs managing 93 funds for 22.5 million member accounts with total assets approaching 2.9 trillion AUD.[i] Conversely in 2023-24, ASIC regulated 3,610 registered managed investment schemes (MIS)[ii] which are not subject to the PHD Regulations. The latest Australian Bureau of Statistics (ABS) Managed Funds data from December 2023 reports the total managed funds industry at 4.8 trillion AUD.[iii]

Even acknowledging that it can be difficult to measure due to cross investing between institutions, the difference between the value of the managed funds sector compared to the RSE assets demonstrates a huge discrepancy in disclosure coverage. This is without accounting for exemptions within current Regulations for external managers and certain asset classes – see below.

b) The current PHD regime **doesn't capture external investment managers** by not requiring reporting to the asset level where assets are being managed externally. The use of external managers is prevalent within investment practice and has resulted in a significant absence of material information, including with public investment vehicles. For example, consider the current PHD coverage of the Future Fund which is subject to reporting rules broadly consistent with those applicable to RSEs. From public disclosures: 45% of the over 290 billion AUD invested with the Future Fund is managed externally and therefore NOT publicly disclosed.[iv]

c) **Exemptions in PHD Regulations works against transparency** and undermine the intent of the disclosure requirements. While private assets grow within total asset and portfolio allocation, this asset class (along with others) remains exempt from current PHD Regulations. As a general principle, all assets within funds should operate under a consistent set of disclosure rules.

That said, regulation should recognise that good practice in disclosure depends on context. It may differ based on aspects such as: the private market sub-asset class (for example, real estate, infrastructure, equity, credit); whether the strategy is open or closed-ended; and whether the fund is offered under a product disclosure statement or information memorandum. There are legitimate concerns about how to appropriately disclose private assets which need to be considered before expanding the PHD regime. For example, there may be certain circumstances where it is too risky to disclose information that is market-sensitive and possibly not in the best financial interest of members (such as asset price). These circumstances should be the exemption to the rule, which should encourage transparency. Decisions (with accountability) should be made on a case-by-case basis by the disclosing entity in accordance with clear guidance. In developing disclosure rules for private markets, it should be noted that listed real estate investment trusts (REITs) and unlisted retail property funds are already required to publish valuation information.

A wholesale exemption from the PHD requirements to mitigate challenges particular to private markets such as valuation concerns is not necessary or advisable and would compromise the integrity of the market, see recommendations below.

d) **Australia lags behind global practice on PHD.** Biennial reporting from Morningstar Manger Research[v] into global best practice for managed funds found Australia continues to significantly lag behind other developed countries on disclosure practices. Despite the introduction of PHD Regulations in 2021, the report finds that "Australia continues to have the weakest portfolio disclosure requirements in the developed world".[vi] The current status of Australia's PHD Regulations put Australia out of step with its peers and impacts consumer participation, market transparency and capacity for regulatory oversight, as well as understanding of responsible investing and progress towards Australian Government priorities such as net-zero targets.

e) The current PHD regime **does not provide information on how responsible investing strategies are carried across a portfolio.** The current level of PHD does not allow consumers/retail investors to fully check that their investments, and the product claims, are in line with their values, which increase the risk of consumers being misled (i.e. Greenwashing).[vii] Appropriate transparency of portfolio holdings can mitigate greenwashing by enabling consumers to understand their investments and hold investment managers to account for claims or promotional material which represent sustainability credentials.

Recommendations:

- Reform existing PHD Regulations to:
    - apply industry-wide and include full, asset level portfolio holdings disclosure on a look-through basis that is meaningful to the end-user (beneficiary, i.e. consumer and/or retail investor) and goes beyond associated entities (i.e. fund managers) to the assets themselves;
    - remove the requirement from PHD regulations to provide pricing information from all disclosures, assisting with the complexity of valuation of some asset classes (for example, private assets).
- Introduce a "comply or explain" framework for market sensitive information (which may include valuations) to ensure transparency is the default and non-disclosure is the exception.
- Provide clear and useful regulatory guidance on appropriate disclosure related to private assets, including valuations. For example, providing a list of individual private asset holdings with an aggregate value of the asset class (at manager or asset class level).
- Develop a disclosure register for all managed investment schemes to upload portfolios which is usable for regulators (to support market oversight) and consumers (to allow informed investment decision-making).

2 Implement standards for labelling in financial products support consumers and retail investors

2.1 The RIAA report *From Values to Riches 2024: Charting consumer demand for Responsible Investing in Australia* showed that 88% Australians expect their money in superannuation, banks and other investments to be invested responsibly and ethically.[viii] But the financial services sector needs to do a better job of meeting expectations, with 78% of people concerned about 'greenwashing'.

2.2 The Australian Government can build consumer confidence in the financial system's sustainability credentials with regulation that improves the standard, transparency and consistency of financial products on offer to Australians.

2.3 An industry-wide labelling regime for sustainability-related financial products can improve consumer protection through disclosure that helps consumers and retail investors to understand the extent to which their non-financial interests are being progressed by a fund and/or product.

2.4 For over 18 years, RIAA has run the well-established, industry-accepted and rigorous framework within RIAA's Certification Program, which includes the Guidance Note on Product Labelling.[ix] We have proposed to the Australian Government that the Certification framework be used as the basis of the legislative product labelling regime.[x]

Recommendation:

- Leveraging the widely accepted and industry-endorsed RIAA Certification Program, introduce product labelling requirements with standards which require specific disclosure on private assets.

3 Introduce an industry-informed Australian Stewardship Code

3.1 Stewardship refers to using the rights and influence (beyond capital allocation) which comes with ownership to protect and enhance overall long-term value for beneficiaries. This may also include the common economic, social, and environmental assets on which the beneficiaries' interests depend.

3.2 The discussion paper highlights the increasing importance of investor stewardship particularly as ownership has become more concentrated through superannuation and passive fund investments. In addition, investing in private assets often results in significant ownership of the asset (unlike in public markets where minority ownership is more common). Investment managers should ensure they are acting in their members' best interests when exercising ownership rights by demonstrating strong investor stewardship.

3.3 While Australia has established industry stewardship frameworks (the Asset Owner Stewardship Code and RIAA Certification, see below), this has limited market coverage, in turn limiting the evaluation of good stewardship practice. Developed through industry collaboration, an Australian industry-wide stewardship code would build a framework for investors to steer the companies they own on critical issues, including those related to environmental, social and corporate governance, while supporting long-term and sustainability value for all Australians.

Recommendation:

- Establish an industry-wide Australian stewardship code, leveraging existing industry frameworks.

Examples of existing stewardship frameworks in Australia

RIAA Responsible Investment Certification – Stewardship

The Responsible Investment Standard requires RIAA certified products to be managed by active stewards who can detail their manager-wide stewardship policy, practices, and performance, as well as the relevance of these to the responsible investment product. The Standard also requires relevant and accessible responsible investment disclosures where managers must publish activities and outcomes from stewardship practices, including engagement and voting. Guidance Note – Stewardship practices and disclosures provides information on how products can meet these requirements which are intended to:

- evidence issuer claims around stewardship practices and outcomes;
- provide an opportunity to demonstrate to external stakeholders the progress being made through corporate and other engagement on ESG related matters;
- show that issuers are exercising their responsibilities as fiduciaries of other people's capital through the disclosure of voting over underlying holdings (where relevant); and show that stewardship is applied regardless of the investment structure.

Stewardship Code Aotearoa New Zealand (NZ Code)[xi]
Co-hosted by RIAA, the NZ Code provides a principles-based framework for achieving the three interconnected goals of effective stewardship:

- to create and preserve long-term value for current and future generations;
- to ensure the efficient management of capital whilst considering the best interests of clients and beneficiaries; and
- to contribute towards achieving sustainable outcomes for our environment, society, and economy.

In just one year after its inception, the NZ Code's signatories comprised 60% of the total AUM in New Zealand in 2023.[xii]

Australian Asset Owner Stewardship Code (AO Code)[xiii]
Established by the The Australian Council of Superannuation Investors Limited (ACSI), the AO Code was created in 2018 (updated in 2024) to help increase the transparency and accountability of stewardship activities in Australia.

The AO Code provides stewardship principles and guidance to aid asset owners in fulfilling their fiduciary obligations to their beneficiaries. This allows asset owners to approach stewardship in the spirit of the principles while reflecting their size, resourcing, membership and investment policies. Signatories to the AO Code disclose their approach to key stewardship activities: voting, engagement, policy advocacy, collaboration and the selection, appointment and monitoring of external asset managers, and to report the outcomes of those activities.

Specific responses

Developments in global capital markets and their significance for Australia

Q1 What key impacts have global market developments had on Australian capital markets? What key impacts do you anticipate in the future? Please provide examples from your experience.

Q2 Do you have any additional insights into the attraction of private markets as an issuer or an investor?

The following developments can be observed:

- **Non-financial risks increasingly considered within investment practice.** The RIAA *Responsible Investment Benchmark Report Australia 2024*[xiv] found that in 2023, 99% of survey respondents implemented ESG integration (defined as the ongoing consideration of ESG factors within an investment analysis and decision-making process with the aim to improve risk-adjusted returns) within their investment strategies. Institutional investors (in longer-term projects) are increasingly interested in sustainability-related issues to ensure proper risk management of risks in their investment portfolios: see supporting comments under recommendation 2. Improved disclosure requirements for consumers and retail investors would better support informed decision-making.

- **ESG moving into regulatory space.** ESG and Stewardship disclosures have been an increased focus of global regulatory activity. Jurisdictions across the globe have advanced disclosure and labelling practices. While there has been clear leadership on this front from the EU and UK; there has also been significant progress in a number of economies in Asia, such as China, Hong Kong SAR, Malaysia, Thailand, Singapore, the Republic of Korea, India and Japan.

- **Complex global and systemic risks impacting finance**. Investors see modern slavery and other types of labour exploitation as issues that go beyond ethics. Modern slavery presents investment risks, including reputational risk and brand damage, legal risk and risks related to earnings stability. Given the prevalence of modern slavery globally, it can be difficult for investors to screen out or diversify away modern slavery risk in an investment portfolio. The global prevalence of modern slavery poses a systemic risk to investors in a globalised economy.

- **Increase in impact of natural disasters leading to demand on financial sector to respond**. Due to global vulnerability to the physical risks of climate change, failing to act brings financial, economic and physical risks. The rising cost of natural disaster recovery coupled with the impact on vulnerable sectors requires Australia to be at the forefront of tackling these risks.

Private markets present increasingly attractive opportunities for the growing area of responsible investing, including to address some of the issues listed above. As these assets are generally held long term and at more significant percent of ownership, investors can have an influential role in stewarding responsible investment to create sustainable long term investment value.

See also *Context for RIAA's response* above.

Healthy public equity markets

Q5 What would make public markets in Australia more attractive to entities seeking to raise capital or access liquidity for investors while maintaining appropriate investor protections?

Q6 Do you agree that a sustained decline in the number, size or sectorial spread of listings would negatively impact the Australian economy? If so, can you suggest ways to mitigate any adverse effects that may arise from such changes?

Q7 To what extent are any greater expectations of public companies, compared to private companies, the result of Australian regulatory settings or the product of public scrutiny and community expectations of these companies?

In response to this section, RIAA refers to and supports the response by ACSI to the discussion paper.

Private market risks and market efficiency and confidence

Q8 Are Australian regulatory settings and oversight fit for purpose to support efficient capital raising and confidence in private markets? If not, what could be improved?

See key recommendations above and response to Q13 below.

Q9 Have we identified the key risks for investors from private markets? Which issues and risks should ASIC focus on as a priority? Please explain your views.

See key recommendations above.

Retail investor participation in private markets

Q11 What is the size of current and likely future exposures of retail investors to private markets?

Q12 What additional benefits and risks arise from retail investor participation in private markets?

The discussion paper raises concerns about the lack of data available on retail investor exposure to private markets noting other jurisdictions are taking steps to fill this gap. RIAA shares this concern given the increasing exposure of retail investors to private assets through their superannuation and other more accessible investment vehicles – particularly where these investments use responsible investment strategies and make sustainability-related claims to meet demand and attract and retain increasingly engaged consumers. See key recommendation 1 *Expand existing portfolio holdings disclosure (PHD) regime* which can address these data concerns.

Regarding increased consumer demand for investment products which align with their values, see key recommendation 2 *Improved disclosure requirements for consumers and retail investors to support informed decision-making.*

Q13 Do current financial services laws provide sufficient protections for retail investors investing in private assets (for example, general licensee obligations, design and distribution obligations, disclosure obligations, prohibitions against misleading or deceptive conduct, and superannuation trustee obligations)?

No. While Australia's corporations and financial services laws are overall sound, they fall short of being sufficient to protect retail investors investing in private assets and address the increased risk of greenwashing due to:

- Current PHD Regulations, which do not require private assets to be disclosed amongst other significant limitations. As a result, consumers do not have publicly available information on what they are invested in. See key recommendation 1 above.

- The Your Future Your Super (YFYS) Annual Superannuation Performance Test reforms, which have created unintended consequences disincentivising the superannuation sector from long-term decision-making, taking advantage of investment opportunities in new and emerging sectors and being able to adapt to a changing future: one where a focus on decarbonisation and transitioning to a net-zero economy is crucial. Reform to the performance test should be considered in the context of the growth of private assets for superfunds. RIAA supports the Government reviewing the framework of the performance test and welcomes the ongoing consultation on this issue. See RIAA submission to Treasury consultation for more information.[xv]

- Inadequate product labelling and naming conventions, which provide a consistent standard across the market. As recognised by ASIC, the increase in products with sustainability label and/or making sustainability related claims to attract investment increases the risk of greenwashing for retail investors.[xvi] See key recommendation 2 above.

Transparency and monitoring of the financial system

Q14 What additional transparency measures relating to any aspect of public or private markets would be desirable to support market integrity and better inform investors and/or regulators?

Q15 In the absence of greater transparency, what other tools are available to support market integrity and the fair treatment of investors in private markets?

RIAA cautions against coming to a view on the impact of the growth of the private market without the introduction of increased transparency measures. Recognising the shifting dynamics between public and private markets, a move towards appropriate end-user (beneficiary, i.e. consumer and/or retail investor) transparency through expanding existing PHD regulations, would allow both institutional and retail investors, as well as regulators, to better understand the current exposure to these assets and any consequential risks. The expansion of existing regulations is "low-hanging- fruit" and should be progressed before coming to a view on whether there are risks within Australia's capital markets and implementing more prescriptive measures.

See key recommendations above.

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[i] APRA Annual superannuation bulletin published on 30 January 2025, https://www.apra.gov.au/annual-superannuation-bulletin
[ii] P235, ASIC Annual Report 2023-24, https://download.asic.gov.au/media/nwridckz/asic-annual-report-2023-24_full.pdf
[iii] ABS Managed Funds, Australia December 2023, https://www.abs.gov.au/statistics/economy/finance/managed-funds-australia/latest-release
[iv] Periodic Investment Report 31 December 2024 – Future Fund – Tabel 1 – Investments other than derivatives. Total Value (AUD): 239,686,711,798. Total Value of externally managed investment (AUD) listed at the manager level: 107,800,434,216 (45%): https://www.futurefund.gov.au/en/investment/how-we-invest/what-we-invest-in#collapse_8fff842a-9ee1-4be9-a439-e5ef921a0cba
[v] Morningstar Manger Research Global Investor Experience Update: Fund Disclosures 18 May 2023, https://www.morningstar.com/lp/global-investor-experience-disclosure
[vi] https://www.morningstar.com.au/funds/australia-lags-the-world-in-fund-disclosure
[vii] Greenwashing is information, promotional or otherwise, which misrepresents the extent to which a financial product or investment strategy is environmentally friendly, sustainable or ethical: ASIC Info Sheet 271
[viii] RIAA, *From Values to Riches 2024: Charting consumer demand for Responsible Investing in Australia* https://www.responsibleinvestment.org/research-and-resources/resource/from-values-to-riches-2024-charting-consumer-demand-for-responsible-investing-in-australia
[ix] https://Guidance-Note-Product-labelling.pdf
[x] See RIAA submission to the Draft Sustainable Finance Strategy consultation for more information: https://www.responsibleinvestment.org/events-news/item/au-treasury---draft-sustainable-finance-strategy
[xi] https://stewardshipcode.nz/
[xii] *Stewardship Code Aotearoa New Zealand. One Year of Stewardship in Aotearoa*, https://stewardshipcode.nz/media/one-year-of-stewardship-in-aotearoa
[xiii] ACSI, https://acsi.org.au/members/australian-asset-owner-stewardship-code/
[xiv] RIAA, *Responsible Investment Benchmark Report Australia 2024*, https://www.responsibleinvestment.org/research-and-resources/resource/responsible-investment-benchmark-report-australia-2024
[xv] Submission to AU Treasury – Annual Superannuation Performance Test – Design Options, https://www.responsibleinvestment.org/events-news/item/au-treasury---annual-superannuation-performance-test---design-options
[xvi] There has been an increase in investor demand for, and the availability of, sustainability-related financial products in the Australian market. With this comes a growing risk of greenwashing and, as a result, investors being confused or misled: ASIC Info Sheet 271