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[REDACTED]
Commissioner
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

Dear [REDACTED]

ASIC's proposed change to stamp duty disclosure requirements (CS 39)

The Property Council of Australia (the Property Council) welcomes the opportunity to respond to the Australian Securities and Investments Commission's (ASIC's) consultation on the proposed change to stamp duty disclosure requirements (CS 39) by superannuation funds through Regulatory Guide 97 *Disclosing fees and costs in PDSs and periodic statements* (RG 97).

The Property Council is the peak body for owners and investors in Australia's \$670 billion property industry. We represent owners, fund managers, superannuation funds, developers, and investors across all four quadrants of property investments: debt, equity, public and private.

The property industry is the country's second largest employer, providing over 1.4 million jobs to Australians, representing a direct gross domestic product (GDP) contribution of \$232 billion, or 10.6 per cent of total GDP, as well as 18.2 per cent of total tax revenues totalling \$129.6 billion.

Executive summary

The Property Council does not support the proposal to require stamp duty to be disclosed in Fees and Costs Summaries as an average amount over seven years.

Engagement with impacted members, including real estate experts within affected superannuation funds, indicates that the proposal is unlikely to have a material impact on real estate investment by superannuation funds by addressing the fundamental flaws within the current disclosure requirements.

While the proposal may potentially provide a modest short-term benefit for some funds, there is significant uncertainty about longer-term impacts, particularly for ex-growth or low-turnover investment options by superannuation funds.

Most importantly, the Property Council does not support an ineffective interim solution in advance of an appropriate, necessary and permanent solution implemented by ASIC. Asking trustees to

potentially change methodology twice in as many years is disruptive, counter-productive and fails good policy making.

Key reasons why ASIC should not proceed with this change

- **It does not solve the core problem.** The proposal keeps the fundamental issue with stamp duty disclosure faced by superannuation funds – it keeps stamp duty within transaction costs. Smoothing may reduce annual spikes, but it does not address the underlying comparability issues between funds, structures and asset types.
- **It creates unnecessary disruption.** Trustees would need to implement new calculation processes, controls, system changes and disclosure updates in early 2026, only to face a further reset when the broader RG 97 review is finalised. This is a significant risk for inconsistent adoption and will further reduce comparability during the transition.
- **It may create new distortions over time.** The proposal for smoothing may turn a lumpy cost into a persistent disclosed cost that remains within transaction costs for years, even when current activity is low. This can be particularly problematic for ex-growth and low-turnover offerings by funds.
- **The expected benefits are very limited.** Member feedback indicates that the proposal is unlikely to address distortions to real estate investment, which are fundamentally caused by requirements to disclose stamp duty as a transaction cost.
- **It risks undermining confidence in the regime.** A temporary change, which doesn't address the core problem with stamp duty disclosure, followed by a full redesign soon after could further reduce confidence in RG 97 disclosures for both industry and consumers.

What ASIC should do instead

1. **Do not proceed with the proposed change**, and do not pursue other interim solutions that would require repeated changes within a short period of time.
2. **Fast-track the full review of RG 97**, with stamp duty disclosure as an early priority item, and commit to a clear timeline and consultation plan to finalise changes within 12 months.

Introduction and prior engagement

A key part of the Property Council's engagement with institutional investors is through its Asset Owners Roundtable. The roundtable brings together senior leaders in real estate investment, including superannuation funds and other institutional investors, to engage on investment settings that affect capital allocation into Australian property.

Many superannuation funds invest in property on behalf of millions of Australians as part of efforts to deliver strong long-term returns and to diversify portfolios.

Superannuation funds gain exposure to property in different ways. Some funds invest through listed property securities, such as Australian Real Estate Investment Trusts (A-REITs), where exposure is obtained via shares on public markets.

Others invest through direct ownership of property assets, either wholly or partially alongside other investors including A-REITs and other funds, often via unlisted structures. Many prefer this direct approach because it can offer long-term and stable income, greater control over assets and

management decisions, and a closer alignment with each superannuation funds' investment objectives.

In practice, funds often use a mix of these approaches, depending on their investment strategy, size and capability.

The Property Council supports both listed and direct property investment by superannuation funds. We believe that funds should be free to choose the form of exposure that best meets their investment objectives and duties to members, based on their considerations of risk, return, diversification, liquidity and member outcomes.

Prior engagement on RG 97

The Property Council has engaged with government, Treasury and ASIC over a number of years on the operation of RG 97 and the fees and costs disclosure framework as it applies to real estate.

We welcomed changes to RG 97 made in late 2019 to exclude property operating costs, evidence that ASIC has chosen to act in the past on distorting disclosure requirements.

In particular, we have consistently raised concerns that **stamp duty is an unavoidable, statute-imposed tax**, that is large and episodic, and that it is being treated as a transaction cost analogous to service or market execution costs that are often small, variable and at least partly controllable, such as adviser and legal fees, due diligence costs, valuations, and for foreign investment, currency related costs.

Common ground: agreement with industry on the issues

ASIC's proposal to change the treatment of stamp duty disclosure is an acknowledgement that the current approach is not working as intended. That ASIC sees a need to intervene reflects a shared view with industry that stamp duty disclosure is not fit for purpose.

In its announcement ASIC recognised that stamp duty is a "large, irregular cost which may misrepresent the actual volatility of a fund's fees and costs structure, distorting consumer decision-making and funds' investment decisions".

This is an important recognition of the facts, and ASIC must pursue a solution that addresses the issue, and does not inadvertently further entrench the distorting effects of stamp duty disclosure.

Background of ASIC's proposal

ASIC is proposing to amend the fees and costs disclosure requirement so that stamp duty is treated differently from other transaction costs for disclosure purposes.

In practical terms, the proposal would:

- Keep stamp duty within the transaction costs figure that appears in the Fees and Costs Summary,
- Require the stamp duty component to be calculated and disclosed as an **average annual amount over up-to seven years**, rather than reflecting a potentially large, one-off outcome in a single year, and
- Require trustees, where relevant, to include a short explanation of how the stamp duty amount has been calculated.

The proposed averaging approach is intended to apply to stamp duty only, while other transaction cost components would continue to be determined using the existing approach.

ASIC's objectives

CS 39 indicates that the proposal is intended to:

- Reduce volatility in disclosed transaction costs that can arise from large, episodic stamp duty payments,
- Reduce the likelihood that this volatility distorts comparisons, including in consumer-facing comparison tools, and
- Improve the consistency of fees and costs disclosures.

Overview of the "seven-year average" approach

Under ASIC's proposal, trustees would continue to disclose stamp duty within the transaction costs figure in the Fees and Costs Summary.

The proposal's objective intends for stamp duty to no longer be determined in a way that can produce a large, one-off "spike" in a single year. Instead, trustees would disclose stamp duty as an average annual amount, smoothed over a multi-year period up to seven financial years.

In practice, the averaging period would depend on how long the relevant investment option has been offered by the fund, either:

- Those with **seven years or more** operating history, as an average annual amount over the previous seven financial years, or
- Those with **less than seven financial years'** operating history, as an average annual amount over the period from when the option was first offered up to the end of the most recent financial year.

This means the disclosed stamp duty amount would differ not only by the level of transaction activity, but also by the timing of when an investment option commenced and when major acquisitions occurred.

The proposal would also introduce new disclosure requirements. Trustees would need to ensure the relevant PDS includes a clear explanation of how the stamp duty amount has been calculated, including the period used and how the averaging methodology has been applied.

Assessment of the proposal's impacts

The Property Council has engaged with impacted superannuation fund members, including real estate experts within each fund, regarding the likely outcome of the proposed change, and whether it will meet the stated objectives of ASIC.

Likely behavioural impact on real estate investment

The proposal is unlikely to have a material impact on overall investment into real estate by superannuation funds.

Strategic allocations are typically driven by long-term return expectations, diversification benefits, portfolio construction and member outcomes; however, the funds have been consistently clear that disclosure settings, including RG 97, are driving behaviour and will influence the timing, cadence and type of property acquisition.

The Property Council and its superannuation fund members have consistently argued that the RG 97 stamp duty disclosure framework is artificially limiting investment by funds into unlisted real estate. Without a discernible change in behaviour by funds (such as a return of the allocation to

real estate to the long-term average), then the proposal is failing its objective to address the distorting nature of the disclosures.

Potential short-term impacts

In the short-term, funds have advised us that averaging may reduce the visibility of sharp one-year increased in transaction costs that can occur when a fund undertakes an acquisition.

This may slightly reduce the immediate “headline” impact in a Fees and Costs Summary following a major transaction year.

Any short-term benefit however is unlikely to be even. Investment options which have recently completed large acquisitions may appear to benefit from a lower disclosed figure in the next cycle, however other options (such as those who have decided to slow transaction activity) may not benefit in the same way.

The proposal therefore risks shifting outcomes between funds and options based on the timing of historical property transactions, rather than the underlying efficiency or value of the transaction.

Potential medium to long-term impacts

It is clear that while averaging will reduce spikes, it also makes stamp duty **persist in transaction cost disclosure over several years**.

Stamp duty paid in a growth or acquisition period will continue to be disclosed within transaction costs for years afterwards, even if the current acquisition activity is low.

This changes the nature of the distortion from a “spike” to a “persistent drag”. It does not solve the problem faced by superannuation funds.

For mature, low-turnover property exposures, such as where acquisitions are currently infrequent and portfolios are largely established, the averaging approach will continue to influence reported transaction costs long after the relevant transaction occurs.

This will continue to make those funds or investment options appear to have consistently higher transaction costs even when current activity is minimal.

Risk of misinterpretation by consumers and comparison tools

There is a real risk that consumers and comparison tools will interpret or present an averaged stamp duty figure as an ongoing, recurring “cost of investing”, when in fact it is an **unavoidable, statute-imposed tax**.

This will further entrench the risk of false comparability between asset classes or investment pathways, influenced by the averaging methodology, maturity of funds and timing of transactions, and not on the investment rationale or the return to members.

Risk of errors and inconsistent application

There is a further risk that introducing an averaging approach that depends on historical periods and determination of annualisation creates further scope of:

- Inconsistent application between funds, and
- Errors that may require remediation.

Inconsistency and risk of error is amplified where multiple service providers are involved or where exposure to unlisted real estate is held through layered investment structures.

Will averaging improve consumer understanding?

While averaging may reduce volatility, it is not clear that it improves consumer understanding of what is driving outcomes.

A smoothed number can actually obscure the reality that stamp duty is an episodic tax linked to the timing of acquisitions, and it may not be readily understood by members as such.

As Fees and Costs Summaries feed into dashboards, tools and league tables, changes that alter the timing and persistence of stamp duty disclosure can materially affect rankings and comparisons, even if underlying investment outcomes have not changed.

This can create perverse incentives to manage reported outcomes rather than focus on genuine member value, further than what currently exists within stamp duty disclosure.

Net effect of the proposals

Taking these considerations together, the proposal is unlikely to deliver a clear improvement to comparability, distortions against unlisted property investment, or consumer outcomes.

It may reduce one-year spikes, but it does so by introducing a new persistent drag and perverse timing effects, additional complexity, and the likelihood of a third methodology in as many years through the broader review of RG 97.

In our view, these impacts mean the proposal is not an effective solution, either interim or permanent, and does not justify the disruption and cost it would impose.

Recommended alternative: fast-track the full RG 97 review

Principles of reform

The Property Council supports reform that improves the usefulness of fees and costs disclosure for consumers and supports fair, like-for-like comparisons between funds and investment options.

In our view, the guiding principles for disclosures including stamp duty treatment should be:

1. **Comparability:** disclosures should allow trustees and consumers to compare investment options and asset classes on a consistent basis, without outcomes being driven by the timing of unavoidable taxes.
2. **Transparency:** material costs should remain visible, but in a way that explains what they are and avoids distorting headline figures.
3. **Practicality:** the approach must be capable of being implemented consistently across trustees, administrators and platforms, without undue complexity.
4. **Consumer utility** disclosures should help members understand what matters for outcomes of their superannuation funds over time, particularly **net returns**.
5. **Done once:** change should be made once, and not through interim measures.

Remove stamp duty from transaction costs

The Property Council recommends that ASIC adopt a permanent approach through this review of RG 97 that **removes stamp duty from transaction costs**, and instead treats it separately as an unavoidable tax.

This could be achieved by using the approach consistent with the logic applied when the framework was adjusted to address the treatment of property operating costs.

The same underlying principle applies here: some costs are intrinsic to holding and operating physical assets and do not lend themselves to being compared as though they are discretionary fees or management charges.

Stamp duty is even more clearly in this category.

It is unavoidable, externally imposed by State and territory governments and should be treated in a way that improves comparability, rather than being allowed to dominate transaction cost disclosure.

Removing stamp duty from transaction costs does not mean removing disclosure.

It means placing stamp duty in a disclosure category that is clearer and more meaningful to consumers, such as a clearly labelled statutory charge or tax component, with simple explanatory language.

In addition, removing stamp duty would improve comparability between domestic and offshore real estate assets, including housing. Under the current framework, the disclosure of stamp duty disadvantages Australian real estate investments relative to overseas assets, where equivalent transfer duties are either less or not payable, and is actively distorting investments towards offshore exposure.

As outlined consistently by the Property Council, its superannuation members and industry partners, ASIC should consider the following options:

- reclassifying stamp duty as an excluded transaction cost, or
- reclassifying stamp duty as an incidental/operating cost reported separately as a statutory tax, rather than a fee or ordinary transaction cost.

Implementation approach

ASIC should fast-track the full review of RG 97 with stamp duty as a priority item, and provide a clear pathway for implementation that:

- Involves early targeted consultation with trustees, administrators, platforms and key industry stakeholders including the Property Council,
- Sets a clear timeline to be resolved within 12 months,
- Provides clear guidance to support consistent treatment across different structures and products, and involve industry stakeholders including the Property Council in its development, and
- Avoids the need for repeated methodological change by delivering a permanent solution as a single reform.

We recognise that the consultation reflects a shared understanding that the current treatment of stamp duty can distort transaction cost disclosure and undermine comparability, however we do not consider an interim averaging approach is the right solution.

We would welcome the opportunity to engage further with ASIC or its Superannuation Investment Working Group, including by facilitating direct input from members of the Property Council's Asset Owners Roundtable and impacted superannuation funds with deep real estate expertise.

The Property Council welcomes the opportunity to discuss this submission in more detail. Please contact [REDACTED] to arrange a meeting.

Yours sincerely

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[REDACTED]

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Property Council of Australia