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Retirement Income and Superannuation Division
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Online submission

Submission: Superannuation advertising ban – Draft regulations

The new rules for superannuation advertising via employee onboarding platforms under the Exposure Draft *Corporations Amendment (Ban on Advertising Superannuation Funds During Onboarding) Regulations 2026* (Exposure Draft Regulations) represent the final step in reducing the real financial harm caused by employee onboarding processes that create duplicate super accounts that people do not want or need.

Super Consumers maintains that there should be a wholesale ban on advertising of superannuation funds in the employee onboarding process.¹ A ban would have saved Australians up to \$224 million per year in extra fees.² However, in lieu of a total ban, the new advertising rules could work to reduce duplicate accounts and fees, and ultimately maximise people's retirement savings.

Our key concerns with the Exposure Draft Regulations are:

1. **Reliance on disclosure:** The new advertising rules rely heavily on disclosure, which has been found to have very limited effectiveness as a consumer protection. This leaves open the risk of 'dark patterns' in onboarding design pushing people into creating duplicate accounts. It also ignores the real-life impacts of 'choice overload' impairing people's ability to make a decision when they are presented with multiple options.
2. **Complex implementation and oversight:** The Exposure Draft Regulations do not mandate the forms of disclosure that will or will not meet the requirements. There are no examples of compliant or non-compliant disclosures in the Explanatory Statement. A regime without key disclosure elements prescribed may be more challenging for the Australian Securities and Investments Commission (ASIC) to effectively enforce.

¹ Super Consumers, [Submission: Senate Economics Legislative Committee Inquiry into Treasury Laws Amendment \(Supporting Choice in Superannuation and Other Measures\) Bill 2025](#), 19 February 2026.

² Super Consumers, [Media release: Payday Super is a win for consumers. But employment onboarding remains a 'hot mess'](#), 9 October 2025.

Recommendation

Treasury should conduct a benchmark review and a three-year post-implementation review of the advertising rules under the Exposure Draft Regulations to assess:

1. To what extent onboarding platform providers are complying with the superannuation advertising rules.
2. Whether the advertising rules have stopped people inappropriately joining new super funds via advertising, including by creating duplicate accounts.
3. The future of superannuation advertising on onboarding platforms, including whether:
 - a. a wholesale superannuation advertising ban should be implemented, or
 - b. the advertising rules should be amended, for example by empowering ASIC to prescribe compliant disclosures, and requiring onboarding platform providers to design their interfaces and processes in line with consumer testing.
4. Any other issues related to superannuation advertising on onboarding platforms.

1. Reliance on disclosure

The advertising rules in the Exposure Draft Regulations rely heavily on the onboarding platform providers' disclosure obligations, which aim to protect new employees from signing up to an advertised super account that they do not want or need. That is, providers must ensure that:

- employees see 'clear and unambiguous' disclosures about stapled funds, how to check, choose and consolidate their super accounts, and the benefits of these things,
- advertisements are 'clearly distinguishable from' and do not have 'greater prominence' than information about a stapled or employer default fund, and
- they disclose any 'consideration or payment' they receive for advertising super funds.

This type of general information might be useful for transparency, and potentially could prompt some action, for example, by encouraging people to use the ATO's Super Fund Lookup tool. However, consumer disclosures such as these have been found to have very limited positive influence on decision-making. There are therefore significant risks in relying on disclosure principles to protect people from signing up to a new super fund.

Disclosure is ineffective or counter-productive

Disclosure can be minimally effective, ineffective or even backfire and contribute to consumer harm. In 2019, the Australian Securities and Investments Commission (ASIC) and the Dutch Authority for the Financial Markets (AFM) reported that "while disclosure is necessary, it alone is often not sufficient to drive good consumer outcomes."³ They also reported that disclosure does

³ ASIC and AFM, [REP 632: Disclosure: Why it shouldn't be the default](#), October 2019, p 4.

not solve the complexity of financial services markets, especially when disclosures must compete for attention.

Choice architecture and “dark patterns”

The design of information and processes (“choice architecture”) significantly influences people’s decision making. ASIC and the AFM highlighted that “choices can never be framed completely neutrally” and that choice architecture is used to make purchases easy, and/or to capture or divert attention on certain information.⁴

The Exposure Draft Regulations have a vague requirement that advertisements do not have “greater prominence” than the employee’s stapled fund or the employer default fund. This is highly subjective, with the only guidance in the Explanatory Statement being the example of something at the top of the page/screen or in bright colours, or bottom of the screen in non-bright colours, or in a “generally less noticeable or impressionable format”.

The lack of detail in how onboarding platform providers must comply with this requirement leaves open the risk of providers continuing to build “dark patterns” into their choice architecture, to push people to opt for a major new financial product without considering it.

“Dark patterns” are deceptive and manipulative online design features which rely on a mix of cognitive biases and information asymmetry “to influence people’s choices, often not in their best interests”.⁵ The practice is so prolific and damaging in online markets that the new Unfair Trading Practices Prohibition (UTPP) is addressed at curbing this practice.⁶ The consumer protection regime in this space is illogical. Despite significant harm existing, conduct in relation to financial products and services is carved out from the UTPP regime. The current regulations are an opportunity to address this illogical carve out, however, the way the new advertising rules are formulated leaves open room for the unfair practice of dark patterns to continue.

Leaving onboarding platform providers with broad discretion about information and process design is the equivalent of leaving the fox in charge of the hen house.

Given the Exposure Draft Regulations are not implementing an advertising ban, the advertising rules should have been drafted to maximise the effectiveness and efficiency of the disclosure regime. This would mean, at minimum:

- ASIC is empowered to prescribe the wording and presentation of disclosures, akin to the regulatory approach for Consumer Advisory Warnings in superannuation PDSs⁷ and the deferred sales model for add-on insurance.⁸

⁴ ASIC and AFM, p 25.

⁵ Gupta C, [Made to Manipulate: The impact of deceptive online design practices on wellbeing and strategies to mitigate harm](#), April 2025, p 7.

⁶ [Competition and Consumer Amendment \(Unfair Trading Practices\) Bill 2026](#).

⁷ Corporations Regulation 2001 Sch 10 cl 221 and 222 and Sch 10E cl 8(2).

⁸ ASIC, [RG 275: The deferred sales model for add-on insurance](#), July 2021.

- Onboarding platform providers must regularly consumer test their disclosures and choice architecture, and improve these based on test results, to ensure that consumers are not continuing to be misled into signing up to superfluous new super funds. This could be implemented similarly to the UK Financial Conduct Authority's General Consumer Duty, which requires financial firms to test, monitor and adapt their customer communications.⁹

Choice overload

Currently, people are faced with multiple advertised superannuation funds when they go through the employee onboarding process. As options increase, people's cognitive ability to choose decreases. The "choice overload" effect is worse when the decision is more difficult, the choice is larger and more complex, and a person's preference is more uncertain.¹⁰ Experiencing impaired decision-making abilities is high-risk when deciding on a major financial product, and not effectively addressed by consumer disclosure.

Decision about the super product is secondary

Prompting someone to consider multiple options and choose a new super fund while they are signing up to a new job is a significant diversion from their primary focus. It is similar to the sale of add-on insurance with a primary product such as a car.

In the case of add-on insurance, ASIC highlighted concerns that processes were designed for consumers to "disengage with the sales process through decision fatigue, information overload and complex product offerings and options constraining a consumer's ability to make an informed purchasing decision."¹¹ The Government intervened with a deferred sales model to create a "break" between the secondary product being introduced and sold. This recognised the impact that diverted focus has on people considering financial products - it is very hard to make clear decisions about a secondary point of focus.

2. Complex implementation and oversight

As outlined above, the advertising rules under the Exposure Draft Regulations leave broad discretion to onboarding platform providers, and scant guidance as to how they should comply.

The risks of this approach are:

- non-compliance by onboarding platform providers, whether wilful, or because of misinterpretation of the advertising rules, or non-compliant systems and interface design,

⁹ Financial Conduct Authority, FCA Handbook, [PRIN 2A The Consumer Duty](#), PRIN 2A.5.10.

¹⁰ Chernev A, Böckenholt U, Goodman J, Choice overload: A conceptual review and meta-analysis, *Journal of Consumer Psychology*, Vol 25 Iss 2, 2015, pp 333-358, <https://doi.org/10.1016/j.jcps.2014.08.002>.

¹¹ ASIC, [REP 492 A market that is failing consumers: The sale of add-on insurance through car dealers](#), September 2016, para 184.

- more complex compliance arrangements for providers than a total advertising ban, with associated costs to providers which will ultimately be borne by businesses who use the onboarding software, and/or super funds who advertise,
- complexity for ASIC to oversee and enforce the advertising rules, given the disclosure requirements are high-level principles and open to broad interpretation, and
- from a public policy perspective, an inability to clearly assess compliance and measure the impact on people's decision making when going through onboarding.

Given the lack of clarity in the advertising rules, there should be a benchmark review of employee onboarding decisions about their super fund now, and a post-implementation review after three years. This review should examine issues such as compliance by onboarding platform providers, the impact of the advertising rules on duplicate accounts, and the future of the advertising rules, including whether a wholesale advertising ban should be introduced. A well-executed post-implementation review will enable the Government to understand if this regime has been effective and the possible need for a total ban, amendments to the Regulations and/or closer regulator oversight.

Recommendation

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4. Any other issues related to superannuation advertising on onboarding platforms.

Please contact Katrina Ellis if you have any questions about this submission:

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