

EXPOSURE DRAFT EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer and Minister for Financial Services

Superannuation Industry (Supervision) Act 1993

Superannuation Industry (Supervision) Amendment (Annual Members' Meetings Notices) Regulations 2022

The *Superannuation Industry (Supervision) Act 1993* (the Act) governs the prudent management of superannuation funds and for their supervision by the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC), and the Commissioner of Taxation.

Subsection 353(1) of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Superannuation Industry (Supervision) Regulations 1994* (the Principal Regulations) prescribe matters in support of the Act.

The purpose of the *Superannuation Industry (Supervision) Amendment (Annual Members' Meetings Notices) Regulations 2022* (the Regulations) is to amend the Principal Regulations to support improved member outcomes by clarifying certain aspects of the disclosure requirements under the Principal Regulations.

The Regulations ensure that superannuation funds are required to disclose an appropriate amount of information to members, while keeping compliance costs low to preserve members' money for retirement.

In August 2021, the *Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Improving Accountability and Member Outcomes) Regulations 2021* amended the Principal Regulations by prescribing that certain information must be provided with a notice for an annual members' meeting. These annual members' meeting disclosure requirements ensure registerable superannuation entity (RSE) licensees provide meaningful information to members.

The Regulations update the annual member meeting disclosure requirements to reduce the regulatory burden for RSE licensees. Regulatory burden is reduced through amendments that:

- remove itemised disclosure of certain expenditure;
- remove the double counting of certain expenditure; and
- align the definition of 'related party' to the definition in the Australian Accounting Standards.

The Regulations apply in relation to a notice of an annual members' meeting for a year of income for a registrable superannuation entity if the notice is given on or after

the commencement of the Regulations; and the year of income ends on or after 30 June 2022.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commenced on the day after the end of the period of 7 days beginning on the day this instrument is registered on the Federal Register of Legislation.

The Regulations have been assessed as having no more than a minor regulatory impact (OBPR Reference Number OBPR22-02488). Accordingly, no Regulatory Impact Statement has been prepared.

Details of the proposed amendments are set out in Attachment A.

A statement of Compatibility with Human Rights is at Attachment B.

Details of the *Superannuation Industry (Supervision) Amendment (Annual Members' Meetings Notices) Regulations 2022*

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Superannuation Industry (Supervision) Amendment (Annual Members' Meetings Notices) Regulations 2022*.

Section 2 – Commencement

The Regulations commence the day after the end of the period of 7 days beginning on the day the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

The Regulations are made under the *Superannuation Industry (Supervision) Act 1993* (the Act).

Section 4 – Schedule

This section provides that each instrument that is specified in the Schedule to this instrument will be amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 1

Subsection 29P(1) of the Act requires a registerable superannuation entity (RSE) licensee of a registerable superannuation entity to hold an annual meeting of members of the entity for each year of income of the entity. RSE licensees are also required to give notice of the meeting to all members of the entity, and provide any information prescribed in regulations with the notice of the meeting (see paragraphs 29P(2)(a) and (3)(b) of the Act).

'RSE licensee' and 'registrable superannuation entity' are defined in section 10 of the Act.

Annual members' meetings allow discussion of the key aspects of the entity and provide members with a forum to ask questions about all areas of the entity's performance and operations.

Items 3 and 4 – Repealing the itemised disclosure of expenses requirements

Item 3 repeals paragraphs 2.10(1)(e) to (h) of the Principal Regulations, which set out the itemised disclosure requirements for certain categories of expenses. These expense categories include:

- promotion, marketing and sponsorship expenses;

- political donations;
- payments to industrial bodies; and
- related party payments.

Item 4 repeals paragraphs 2.10(2)(b) to (e) of the Principal Regulations, and substitutes new paragraphs 2.10(2)(b) to (e). Under the Principal Regulations, the aggregate disclosure requirement reference the requirements to disclose itemised lists of expenses. The Regulations ensure that with the repeal of the requirements to disclose itemised lists, RSE licensees will still be required to disclose an *aggregate* figure for each of these four categories of expenses in the short-form summary that paragraph 2.10(1)(a) of the Principal Regulations requires.

Retaining disclosure of aggregated expense amounts in annual meeting notices will ensure that members are informed ahead of annual members' meetings, whilst also protecting the commercial sensitivity of payments.

Item 4 – Preventing the double-counting of political donation expenditure

Under the Principal Regulations, political donations can be captured by:

- aggregate promotion, marketing, or sponsorship expenses (see paragraph 2.10(2)(b) which refers to paragraph 2.10(1)(e)); and
- aggregate political donations (see paragraph 2.10(2)(c) which refers to paragraph 2.10(1)(f)).

The requirements under the Principal Regulations have the potential to confuse members, as they could result in double-counting political donations where the particular donations aligns with more than one category of expense. This would over-inflate expenses incurred by superannuation funds.

The substituted subparagraphs inserted by item 4 in 2.10(2)(b) clarify the provision by expressly excluding gifts, as defined in the *Commonwealth Electoral Act 1918*, from the requirement to disclose aggregate promotion, marketing, and sponsorship expenditure. This amendment ensures that such amounts are not counted in more than one expense category.

Items 1, 4 and 5 – Aligning the definition of ‘related party’ to the definition in the Australian Accounting Standards

Under paragraph 2.10(1)(h) of the Principal Regulations, RSE licensees are required to disclose payments made to certain related parties. Paragraph 2.10(1)(h) sets out a list of entities as they relate to the RSE licensee. This is a bespoke definition of related party that only applies to paragraph 2.10(1)(h). To reduce complexity, the amendments instead define ‘related party’ in-line with the definition in Australian Accounting Standards. This promotes consistency by ensuring that the Principal Regulations adopt a widely used and industry-recognised definition, as opposed to a bespoke definition which only applies in one situation.

Item 1 inserts a new defined term in subregulation 1.03(1) of the Principal Regulations. The new definition of ‘accounting standard’ prescribes the term to have the same meaning as in the *Corporations Act 2001* (the Corporations Act). Section 9 of the Corporations Act defines ‘accounting standard’ to mean “an instrument in force under section 334 of the Corporations Act, or a provision of such an instrument as it so has effect”.

Item 5 inserts subregulation 2.10(2A) to align the definition of ‘related party’ with the definition in the Australian Accounting Standard *AASB 124 Related Party Disclosures* (the Standard). As subregulation 2.10(2A) incorporates the definition in the Standard, it incorporates the definition for a relevant period of time, that is the period which would apply if the RSE licensee were preparing its financial statements as required by the Standard.

This definition is the relevant definition for the disclosure requirement inserted by Item 4, that is, the substituted new paragraph 2.10(2)(e). This means that a payment is a related party payment if, at the time of the payment, the payment was made from the entity to a related party as defined under the Standard.

Item 2 and 6 – Consequential amendments

Item 2 amends subparagraph 2.10(1)(d)(ii) to remove a semicolon and substitutes a full stop at the end of the subparagraph. This is a consequential amendment to update the punctuation in subregulation 2.10(1) of the Principal Regulations as item 3 repeals paragraphs 2.10(1)(e) to (h).

Item 6 amends subregulation 2.10(3) to omit the references to paragraph “(1)(b) to (h)” and substitutes “(1)(b), (c) or (d)”. This is a consequential amendment to remove references to paragraphs that are repealed by item 3.

Item 7 – Transitional arrangements

Item 7 inserts new Division 14.XX of the Principal Regulations to provide application and transitional rules as follows:

- The amendments apply in relation to a notice of an annual members’ meeting, for a year of income for a registrable superannuation entity if:
 - a) the notice is given on or after the commencement of this item, and
 - b) the year of income ends on or after 30 June 2022.

The effect of this provision is that the amendments apply retrospectively to any notices that relate to each year of income that ends on or after 30 June 2022, however, only notices given after commencement of the Regulations will be subject to the new requirements. All notices given up until commencement must comply with the existing requirements.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Superannuation Industry (Supervision) Amendment (Annual Members' Meetings Notices) Regulations 2022

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the *Superannuation Industry (Supervision) Amendment (Annual Members' Meetings Notices) Regulations 2022* (the Regulations) is to amend the *Superannuation Industry (Supervision) Regulations 1994* (the Principal Regulations) to support improved member outcomes by clarifying certain aspects of the annual members' meeting disclosure requirements.

The Regulations amend the Principal Regulations to update the annual members' meeting disclosure requirements to reduce the regulatory burden for registerable superannuation entity (RSE) licensees. Regulatory burden is reduced through amendments that:

- remove itemised disclosure of certain expenditure;
- remove the double counting of certain expenditure; and
- align the definition of 'related party' to the definition in the Australian Accounting Standards.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.