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Via email: superannuation@treasury.gov.au

To whom it may concern

Please find attached submission to the consultation on draft regulations outlining proposed changes to the disclosure requirements for superannuation Annual Members' Meeting notices.

Yours sincerely

A handwritten signature in black ink that reads 'Stuart Robert'.

STUART ROBERT

Background

The Coalition supports a strong superannuation system to ensure that Australians have enough money to support them in their retirement. It is important to note that when the superannuation system was first introduced it was intentionally established in such a way that super funds held members' money in trust, meaning that:

- i) All money in a fund belongs to individual members and is managed for the sole purpose of growing their savings for retirement;
- ii) The trustees have a heightened obligation to the members akin to a fiduciary duty
- iii) A super fund cannot raise capital or debt, and as such all money spent by a super fund on anything other than return making investments reduces the retirement savings of individual members.

The program of reforms passed by the former parliament, including the *Improving Accountability and Member Outcomes in Superannuation* legislation, the *Your Future Your Super* reforms and others were enacted to make superannuation better for members in four key ways:

- **Your superannuation follows you**, prevent the creation of unintended multiple superannuation accounts;
- **Empowering members**, by making it easier for members to choose a well-performing product that meet their needs;
- **Holding funds to account for underperformance**, protecting members from poor outcomes and encouraging funds to lower costs and fees to boost Australians' retirement incomes; and
- **Increasing transparency and accountability** for how superannuation funds use members' savings.

The draft regulations on changes to the disclosure requirements for superannuation Annual Members' Meeting notices, released by the Albanese Labor Government, relate to the key area of **Increasing transparency and accountability**.

The draft regulation, if imposed by the Albanese Labor Government, will bring ambiguity on how superannuation trustees should be spending members' money.

The draft regulation reverses the implementation of the Productivity Commission's findings from its inquiry report, *Superannuation: Assessing Efficiency and Competitiveness*.

As the Productivity Commission's report identified, unfortunately the culture of some superannuation funds drifted away from the sole responsibility that they have as custodians of members' money. The report found:

Members' outcomes — more than process or intent — must be the key focus of governance arrangements and trustee endeavour. The interests of the fund and the member are not interchangeable concepts. Super funds exist solely as a vessel for members' assets. What is in the best interests of the fund need not automatically be in the best interests of the member.

Funds should also publicly disclose to current and prospective members the proportion of their costs paid to related-party service providers.

Stronger disclosure is needed to shine a light on conflicts of interest and put pressure on trustees to first avoid conflicts and then better manage (unavoidable) residual conflicts.¹

The previous Parliament voted to introduce transparency on how trustees are spending members' money.

Right now, superannuation funds are required to provide members with detailed information regarding how they manage and spend members' money in advance of the Annual Members' Meeting.

To increase transparency and accountability, laws were passed by the previous Parliament ensuring the notice of meetings to members are to include the following:

- The annual report of the fund.
- The annual outcomes assessment funds are required to undertake.
- A copy of the most recent periodic statement for the member.
- A summary of each significant event or material change notice that superannuation funds were required to send under the *Corporations Act 2001* in the last financial year.
- Remuneration of key executives, in line with ASX-listed companies along with any related entity of the fund.
- Marketing expenditures relating to promoting the fund, either directly or indirectly.
- Political donations, either directly or indirectly.
- Sponsorships relating to promoting the fund, either directly or indirectly.
- Payments to industry bodies or trade associations, either directly or indirectly.
- Related party transactions (including payments to non-investment entities).

Proposed Schedule of Amendments and what the changes mean for super fund members

1. Subregulation 1.03(1)

This draft regulation changes the meaning of accounting standard.

2. Subparagraph 2.10(1)(d)(ii)

This draft regulation change corrects a minor typo in the legislation.

3. Paragraphs 2.10(1)(e) to (h)

This draft regulation change removes the requirement for super funds to provide members, prospective members and the public itemised lists of the following:

- Sponsorship: the sum, name and term of each contract the super fund has entered into for sponsorship arrangements
- Gifts to political parties: list of each gift to a political party, campaigner or associated entity; and
- Payments to unions: list of each payment and the name of the entity it was paid; and

¹ Productivity Commission 2018, *Superannuation: Assessing Efficiency and Competitiveness*, Report no. 91, Canberra.

- Payments and RSE: an itemised list showing each such payment and the name of the entity to whom each payment was made to:
 - a connected entity of the RSE licensee of the main entity;
 - an associated entity of another entity (the *third party*) if the third party is a connected entity of the RSE licensee of the main entity;
 - an entity over whom the RSE licensee of the main entity has significant influence;
 - an entity who has significant influence over the RSE licensee of the main entity;
 - an entity whose key management personnel include the RSE licensee, or an executive officer of the RSE licensee, of the main entity;
 - an associated entity of another entity (the *third party*), if the RSE licensee, or an executive officer of the RSE licensee, of the main entity is a member of the key management personnel of the third party.

In 2021, Australian Prudential Regulation Authority (APRA) reviewed 12 funds from a cross-section of the super industry and analysed \$87million of marketing spending, including instances of free tickets to sporting events plus merchandise and hospitality for fund directors, executives and staff.

It found some funds had failed to measure – or were unable to measure – ‘anticipated and achieved benefits’ to members.

APRA provided an example of such expenditure which detailed a super fund entering into a multi-year arrangement to sponsor a sporting team but could not find evidence to show the board had signed off on a business case at the start of the deal.

When releasing the review, APRA Member Margaret Cole said²:

‘Australians expect those they entrust with growing and protecting their retirement savings to deliver value from every business plan enacted, dollar spent and investment made.

‘Overwhelmingly (these reviews) illustrate that robust frameworks, clear accountability and holistic approaches to business planning are essential ingredients in running what are, in most cases, multi-billion-dollar businesses with enormous fiduciary responsibilities. We expect all trustees to review their operations in light of these findings with a view to identifying any sub-standard practices and improving processes and procedures.’

Australian super fund members do not know how much of their superannuation has been provided by way of gifts to political parties, which political parties have benefited and when. The proposed regulation will close the door on allowing such transparency, allowing for less integrity and accountability within the compulsory super industry. Similarly, the draft regulation proposes to close the door on transparency and accountability when it comes to gifts to unions. Under the change, super funds will no longer be required to itemise each gift to unions or registered entities.

² Australian Prudential Regulation Authority (APRA) media release, Greater focus on improving governance and strategic planning in super, 26 October 2021

4. Paragraphs 2.10(2)(b) to (e)

The draft regulation change waters down what is required to be reported by super funds when it comes to spending members' money. It changes the required itemised listing of expenditure on promotion, marketing or sponsorship, political donations, unions and executive salary to one lump sum of combined expenditure. Members will no longer have any transparency on how their money is being spent.

5. After subregulation 2.10(2)

In effect, this removes the requirement for super-fund owned investment vehicles to report on salaries, gifts, fees and other expenditure for executives and board.

Given the quantum of funds managed by these investment vehicles on behalf of the members, it is appropriate they are subject to appropriate oversight by those members, rather than the super fund middle-men.

This proposed regulation removes transparency, accountability and integrity for super fund members.

6. Subregulation 2.10(3)

This change means super funds will only have to direct members to where information on payments, donations, gifts can be found without even listing a sum.

Again, this proposed regulation removes transparency, accountability and integrity for super fund members.

Addition of Division 14.xx—Transitional arrangements arising out of the Superannuation Industry (Supervision) Amendment (Annual Members' Meeting notices) Regulations 2022.

This proposed change means all changes made under this regulation will be backdated to 30 June 2022, meaning no super fund will ever have to report on the transparency and accountability measures for super funds.

Conclusion

These provisions are a transparent attempt to remove accountability for super funds and to subvert the will of the previous Parliament. These proposed amendments are being rushed through by the Government so that the transparency and accountability provisions will be overturned before they have even had a chance to be implemented. This will deny members the opportunity to compare the new disclosure regime to the previous one, and one year's disclosure to another.

Recommendation

The Coalition recommends the Albanese Labor Government does not proceed with the regulations that will remove accountability and transparency for super fund members.