

EXPOSURE DRAFT EXPLANATORY STATEMENT

Corporations Act 2001 Superannuation Industry (Supervision) Act 1993

Treasury Laws Amendment (Measures for Consultation) Regulations 2023: Financial reporting and auditing of registrable superannuation entities

Section 1364(1) of the *Corporations Act 2001* (the Corporations Act) and section 353(1) of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) provide that the Governor-General may make regulations prescribing matters required or permitted by these Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to these Acts.

Specifically, the *Treasury Laws Amendment (Measures for Consultation) Regulations 2023: Financial reporting and auditing of registrable superannuation entities* (the Regulations) relies on the following regulation-making powers:

- section 300C(1)(a) of the Corporations Act, which provides that the regulations may prescribe details in relation to the remuneration of each of the key management personnel of the entity that must be included in the directors' report;
- section 1017DA(1)(a), which provides that the regulations may require the trustee of a superannuation entity to provide the holder of a superannuation product with information relating to the management, financial condition and investment performance of the entity; and
- section 29P(3)(b) of the SIS Act, which provides that the regulations may prescribe the information that must be included with the notice of the annual members' meeting.

The Regulations amend the Corporations Regulations 2001 (Corporations Regulations) and the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations) to support the amendments in Schedule 6 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023* (Schedule 6 to the Act).

Schedule 6 to the Act amends the Corporations Act, the *Australian Securities and Investments Commission Act 2001* (ASIC Act) and the SIS Act to extend and adapt the financial reporting and auditing requirements in Chapter 2M of the Corporations Act to apply to registrable superannuation entities. The purpose of these amendments is to impose financial reporting and auditing obligations on registrable superannuation entities that are consistent with the requirements that apply to public companies and registered schemes.

The financial reporting requirements in Schedule 6 to the Act require an RSE licensee for a registrable superannuation entity to:

- prepare and lodge financial reports for each financial year with the Australian Securities and Investments Commission (ASIC);

- make the financial report, directors' report and auditor's report for each financial year publicly available on the entity's website;
- include details on how to access the financial report, directors' report and auditor's report for a financial year with the notice of the annual members' meeting; and
- provide the entity's financial reports for a specified financial year to a member upon request.

The auditing requirements in Schedule 6 to the Act require an RSE licensee for a registrable superannuation entity to appoint an individual auditor, audit firm or audit company to conduct an audit of the entity and for the auditor to:

- prepare an auditor's report for an audit of an entity's financial report;
- report specified matters to the relevant Regulator;
- meet auditor independence and rotation requirements; and
- prepare, lodge and publish auditor transparency reports, if required.

The Regulations prescribe requirements for the preparation, lodgement, disclosure and publication of information and documents by registrable superannuation entities to improve the compliance and transparency of the superannuation sector.

Details of the Regulations are set out in the [Attachment](#).

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

The Regulations commence on the later of:

- the start of the day after this instrument is registered on the Federal Register of Legislation; and
- the same time as Schedule 6 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023* commences.

Details of the *Treasury Laws Amendment (Measures for Consultation) Regulations 2023: Financial reporting and auditing of registrable superannuation entities*

Name of the Regulations

The name of the Regulations is the *Treasury Laws Amendment (Measures for Consultation) Regulations 2023: Financial reporting and auditing of registrable superannuation entities* (the Regulations).

Commencement

Schedule 1 of the Regulations commences on the later of:

- the start of the day after this instrument is registered on the Federal Register of Legislation; and
- the same time as Schedule 6 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023* (Schedule 6 to the Act) commences.

Authority

The Regulations are made under the following Acts:

- the *Corporations Act 2001* (the Corporations Act); and
- the *Superannuation Industry (Supervision) Act 1993* (the SIS Act).

Schedule

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 Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

The Regulations amend the Corporations Regulations 2001 (Corporations Regulations) and the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations).

Amendments to the Corporations Regulations

Items 1 and 2 – information to accompany financial reports for lodgement

Section 319(1) of the Corporations Act provides that a registrable superannuation entity that is required to prepare or obtain a report for a financial year under Division 1 of Part 2M.3 of the Corporations Act must lodge the report with the Australian Securities and Investments Commission (ASIC).

Registrable superannuation entities (within the meaning of Chapter 2M of the Corporations Act) are required to prepare and lodge the following reports:

- the financial report for the financial year for the entity;
- the directors' report for the year; and
- the auditor's report on the financial report.

Item 1 of the Regulations inserts regulation 1.0.08(1)(e) of the Corporations Regulations to prescribe that a document lodged for a registrable superannuation entity with the ASIC, for the purposes of section 319(1) of the Corporations Act, must be accompanied by all of the following:

- the entity's ABN (short for 'Australian Business Number');
- the dates on which the financial year to which the document relates begins and ends;
- the name of the entity;
- the name of the entity's RSE licensee; and
- a statement of certification.

These requirements are consistent with the requirements for lodging financial reports that apply to registered schemes in regulation 1.0.08(1)(c) of the Corporations Regulations.

Item 2 of the Regulations inserts regulation 1.0.16(4) of the Corporations Regulations to provide that, for a document relating to a registrable superannuation entity to be certified, the document must be in the approved form and signed by a director of the entity.

Section 345AAC of the Corporations Act defines 'director of a registrable superannuation entity' as:

- if the RSE licensee for the entity is a constitutional corporation or a body corporate—a director of the constitutional corporation or body corporate; or
- if the RSE licensee for the entity is a group of individual trustees—each of those trustees.

Item 3 – consolidated financial statements

Schedule 6 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023* (Schedule 6 to the Act) amended various provisions in the Corporations Act relating to the preparation of consolidated financial statements to apply to registrable superannuation entities. These provisions only apply where a consolidated financial statement is required to be prepared. Currently, consolidated financial statements are not required to be prepared for registrable superannuation entities because of the

exemption in the *Australian accounting standard AASB 10: Consolidated Financial Statements* (AASB 10).

Section 295(3) of the Corporations Act requires the notes to the financial statements (which are required to be included in the entity's financial report for the financial year) to include the disclosures required by regulations.

Regulation 2M.3.01 of the Corporations Regulations prescribes the disclosures that are required to be included in the notes to the financial statements, if a consolidated financial statement is required to be prepared for the entity.

Item 3 of the Regulations amends the definition of 'parent entity' in regulation 2M.3.01(3) of the Corporations Regulations to include a registrable superannuation entity that is required (if it is required) to prepare financial statements in relation to a consolidated entity.

As with the changes in Schedule 6 to the Act, the amendment in Item 3 of the Regulations is not intended to require registrable superannuation entities to prepare consolidated financial statements. Instead, it is intended to future proof the legislation in the event that AASB 10 is subsequently amended to require registrable superannuation entities to prepare consolidated financial statements.

Item 4 – reporting remuneration details of key management personnel

Section 29QB of the SIS Act (which was repealed by Schedule 6 to the Act) required an RSE licensee of a registrable superannuation entity to make publicly available and keep up to date at all times on the entity's website:

- the remuneration details prescribed in regulation 2.37 of the SIS Regulations; and
- any other document or information prescribed in regulation 2.38 of the SIS Regulations.

Before 1 July 2023, regulation 2.37 of the SIS Regulations prescribed the details of the remuneration of each executive officer of the RSE licensee and each trustee of the registrable superannuation entity that were required to be made publicly available on the entity's website at all times.

Item 4 of the Regulations inserts regulation 2M.3.04 of the Corporations Regulations for the purposes of section 300C(1)(a) of the Corporations Act. Regulation 2M.3.04 of the Corporations Regulations replicates the requirements in regulation 2.37 of the SIS Regulations by prescribing the details relating to the remuneration of each member of the key management personnel of the entity that must be included in the annual directors' report for the entity.

However, there are three differences between the requirements that were in regulation 2.37 of the SIS Regulations and the new requirements in regulation 2M.3.04 of the Corporations Regulations, these are:

- regulation 2.37 of the SIS Regulations required remuneration details to be published on the entity’s website and kept up to date at all times – regulation 2M.3.04 of the Corporations Regulations requires the prescribed remuneration details to be included in the entity’s directors’ report under the heading ‘Remuneration report’;
 - In accordance with section 314AA of the Corporations Act, the directors’ report (including the Remuneration report) is required to be published annually on the entity’s website within three months after the end of the financial year for the entity.
- regulation 2.37 of the SIS Regulations applied to executive officers of the RSE licensee or to trustees of a registrable superannuation entity - regulation 2M.3.04 of the Corporations Regulations applies to each member of the key management personnel of the registrable superannuation entity; and
 - ‘Key management personnel’ is defined in *Australian accounting standard AASB 124: Related Party Disclosures* (AASB 124) as those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity.
- Regulation 2.37 of the SIS Regulations required the trustee to report remuneration provided by a ‘related entity’ of the registrable superannuation entity – regulation 2M.4.03 of the Corporations Regulations replaces the reference to a ‘related entity’ with ‘related party’, which is defined in accordance with AASB 124. This amendment is intended to clarify the law, without substantially modifying the operation of this provision.

Item 6 - reporting remuneration details (transitional provision)

Regulation 2.37 of the SIS Regulations (which is repealed by item 38 of the Regulations) prescribed the details relating to remuneration details that were required to be published on the entity’s website and kept up to date at all times.

Under the new requirements in regulation 2M.3.04 of the Corporations Regulations (see item 4 of the Regulations), the remuneration details of key management personnel of the entity are required to be published annually as part of the entity’s directors’ report for the year. The first directors’ report (including these remuneration details) is required to be published within three months after the end of the financial year that begins on, or after, 1 July 2023.

Item 6 of the Regulations inserts new regulation 7.9.07ZC of the Corporations Regulations, which is a transitional provision.

Regulation 7.9.07ZC(1) of the Corporations Regulations provides that this regulation is made for the purposes of section 1017DA(1)(a) of the Corporations Act.

Regulations 7.9.07ZC(3) and (4) of the Corporations Regulations require the trustee of a registrable superannuation entity to:

- if the 2022/23 financial year for the registrable superannuation entity began before 1 July 2022 (for example, on 1 April 2022) – publish the information prescribed by regulation 2M.3.04 of the Corporations Regulations on the entity’s website during the following period:
 - starting on – 1 July 2023; and
 - ending on – the day the financial report, directors’ report and auditor’s report are first published on the entity’s website (that is, within three months after the end of the financial year that begins on, or after 1 July 2023).
- if the 2022/23 financial year for the entity began on, or after, 1 July 2023 – publish the information prescribed by regulation 2M.3.04 of the Corporations Regulations on the entity’s website during the following period:
 - starting on – a day that is no later than three months after the end of the financial year that began on, or after, 1 July 2022; and
 - ending on – the day the financial report, directors’ report and auditor’s report are first published on the entity’s website (that is, within three months after the end of the financial year that begins on, or after, 1 July 2023).

The transitional requirements in regulations 7.9.07ZC(3) and (4) of the Corporations Regulations are intended to ensure that members and other interested parties are able to access details about the remuneration of key management personnel of registrable superannuation entities ahead of the new reporting requirements (in section 314AA of the Corporations Act and regulation 2M.3.04 of the Corporations Regulations) taking effect.

Regulation 7.9.07ZC(2) of the Corporations Regulations provides that, as with the requirement to prepare a directors’ report, this transitional provision only applies to registrable superannuation entities within the meaning of Chapter 2M of the Corporations Act. This means that this transitional provision does not apply to exempt public sector superannuation schemes, excluded approved deposit funds, small APRA funds or self managed superannuation funds.

Regulation 7.9.07ZC(8) of the Corporations Regulations requires the remuneration details published for the purposes of regulations 7.9.07ZC(3) and (4) of the Corporations Regulations to be readily accessible from the entity’s website.

The requirements in regulations 7.9.07ZC(5), (6) and (7) relate to fund information and are described below.

Item 6 – publication of other information and documents on the entity’s website

As mentioned above, section 29QB of the SIS Act (which was repealed by Schedule 6 to the Act) also required an RSE licensee to make publicly available and keep up to date at all times on the entity’s website any other document or information prescribed by regulation 2.38 of the SIS Regulations.

Also, before 1 July 2023, an ASIC legislative instrument (ASIC Superannuation (RSE Websites) Instrument 2017/570) set out when the information prescribed by regulation 2.38 of the SIS Regulations was required to be published, and some exemptions to these requirements.

Item 6 of the Regulations inserts new regulation 7.9.07ZB of the Corporations Regulations. This regulation is made for the purposes of section 1017DA(1)(a) of the Corporations Act, which requires the trustee of a superannuation entity to provide information relating to the management, financial condition and investment performance of the entity and/or of any relevant sub-plan to the holder of a superannuation product.

The table under regulation 7.9.07ZB(3) of the Corporations Regulations largely replicates the requirements in regulation 2.38 of the SIS Regulations, with the following differences:

- the requirements that were prescribed in regulations 2.38(2)(i), (j) and (k) of the SIS Regulations have been re-made under regulation 7.9.31A of the Corporations Regulations and are required to be included in the entity’s periodic fund information report (see Item 7 of the Regulations); and
- the requirement in regulation 2.38(2)(f) of the SIS Regulations to publish an annual report has been removed to avoid duplication.
 - The requirement to publish an annual report for the previous financial year is the same as the requirement to publish a periodic fund information report under regulation 7.9.32 of the Corporations Regulations. The removal of this requirement is intended to increase the readability of the law by reducing the use of inconsistent terminology and the duplication of requirements.

Neither of these differences (between regulation 2.38 of the SIS Regulations and regulation 7.9.07ZB of the Corporations Regulations) alter the obligations that apply to superannuation entities.

To ensure continuity of requirements, the documents and information required to be published on the entity’s website immediately before 1 July 2023 (under section 29QB of the SIS Act and regulation 2.38 of the SIS Regulations) must continue to be published on, and after, 1 July 2023. In all other cases, the table in regulation 7.9.07ZB(3) of the Corporations Regulations prescribes when the document or information must be published.

The timing for publication of the documents and information in the table in regulation 7.9.07ZB(3) of the Corporations Regulations largely replicates the

requirements in the ASIC Superannuation (RSE Websites) Instrument 2017/570. This means that, for all of the items in the table (with the exception of items 6 and 14 of the table in regulation 7.9.07ZB(3)), the information or documents are required to be published no later than 20 business days after the relevant day (or the date the document or information is amended or replaced). For example, publication of the trust deed (item 1 of the table) must occur within 20 business days after the trust deed begins to apply, or on the date the deed is amended or replaced.

Item 6 of the table applies where a notification is given to the trustee by the Australian Prudential Regulation Authority (APRA) under section 60C(2) of the SIS Act that a product offered by the trustee has failed the annual performance assessment for the first time. APRA must give such a notification by 31 August after the end of that financial year.

If APRA has given the trustee a fail notice under section 60C of the SIS Act, the trustee must publish a description of the relevant circumstances within 1 business day after 31 August of the year in which the most recent determination under subsection 60C(2) of the SIS Act is given to the trustee.

Item 14 of the table under regulation 7.9.07ZB(3) of the Corporations Regulations requires the trustee to publish the annual financial statement of the trustee for the previous financial year. The annual financial statement of the trustee is required to be published on the entity's website on the day that the statement is first lodged with ASIC or provided to a member of the entity. This is consistent with the existing requirement in the ASIC instrument.

Regulation 7.9.07ZB(4) of the Corporations Regulations requires the prescribed information and documents to be readily accessible from the entity's website and be kept up to date at all times.

Exceptions

Regulations 7.9.07ZB(5) to (8) of the Corporations Regulations replicate the exemptions in the ASIC instrument by providing that:

- where a specified document is required to be published and contains personal information in relation to a beneficiary or former beneficiary - the trustee may comply with the requirement by making available a version of the document that has been redacted to exclude the personal information relating to a beneficiary or former beneficiary; and
 - For the purposes of this exception, personal information has the same meaning as in the *Privacy Act 1988*.
- where a specified requirement is required to be published and the document only relates to the entity because it relates to a standard employer-sponsored sub-plan – the trustee may comply with the requirement by:
 - before 1 July 2024 - making available a version of the document that has been redacted to exclude information that only relates to the

registrable superannuation entity because it relates to a standard employer sponsored sub-plan; or

- from 1 July 2024 – making the document available on the entity’s website in full.

Regulation 7.9.07ZB(8) of the Corporations Regulations defines a ‘standard employer sponsored sub-plan’ as a segment of a public offer superannuation fund for which each member of the segment is:

- a standard employer-sponsored member (as defined in section 16(5) of the SIS Act); or
- a member of a prescribed class for the purposes of sub-paragraph 18(1)(a)(ii)(B) of the SIS Act.

An employer-sponsor is an employer who contributes to the fund for the benefit of a member (or their dependent) of the fund who is an employee.

These exemptions only apply in relation to the following specified documents, as applicable to the entity:

- the entity’s trust deed (Item 1 of the table);
- the governing rules (Item 2 of the table);
- the most recent actuarial report for each defined benefit fund, as required under RSE licensee law (Item 4 of the table);
- the most recent product disclosure statement (or supplementary or replacement product disclosure statement) for the product (Item 5 of the table); and
- each significant change event or material change notice made to members in the previous two years (Item 8 of the table).

Item 5 – definition of fund information

Fund information is defined in regulation 7.9.01(1) of the Corporations Regulations as:

- in relation to a superannuation product, means information
 - relating to the management, financial condition and investment performance of either or both of a superannuation entity and any relevant sub-plan (within the meaning of section 1017DA of the Act); and
 - required to be given under this Division (that is, Division 1 of Part 7.9 of the Corporations Regulations); and
- in relation to an RSA product, means information:

- relating to the management, financial condition and investment performance of an RSA; and
- required to be given under this Division (that is, Division 1 of Part 7.9 of the Corporations Regulations).

Item 5 of the Regulations replaces the definition of ‘fund information’ (in relation to superannuation products and RSA products) in regulation 7.9.01(1) of the Corporations Regulations to mean information required to be given under Part 7.9 of the Corporations Regulations (not just Division 1 of Part 7.9 of the Corporations Regulations).

Item 5 of the Regulations clarifies and corrects the law and does not alter or affect the application or operation of the definition.

Item 7 – content of fund information

Item 7 of the Regulations inserts new regulation 7.9.31A of the Corporations Regulations, which is made for the purposes of section 1017DA(1)(a) of the Corporations Act. Regulation 7.9.31A of the Corporations Regulations provides that, in addition to any applicable requirements in Subdivisions 5.6 and 5.7 of Division 5 of Part 7.9 of the Corporations Regulations, the following information is also required to be included in the entity’s periodic fund information report:

- the name and ABN of each outsourced service provider that has provided a service at any time in the previous 12 months, which may affect a material business activity of the entity;
- the following information about each member of the key management personnel of the entity - the member’s name, qualifications and a summary of the member’s experience as a trustee or board member, including the periods during which the member served as a trustee or board member; and
- the record of attendance at board meetings for each director of the entity for the period the director has served (but no more than for the last seven financial years).

Unlike the former requirement in regulation 2.38(2)(i) of the SIS Regulations, regulation 7.9.31A(a) of the Corporations Regulations is limited to service providers that have provided a service within the previous 12 months. This reduces unnecessary regulatory burden and is appropriate given that the periodic fund information report is required to be prepared and published annually.

Before 1 July 2023, the prescribed information in regulation 7.9.31A of the Corporations Regulations was required to be published on the entity’s website in accordance with regulation 2.38 of the SIS Regulations. The purpose of Item 7 of the Regulations is to move these existing obligations from regulation 2.38 of the SIS Regulations to regulation 7.9.31A of the Corporations Regulations, and does not impose a new obligation on trustees.

Item 10 – when fund information is required to be provided

Item 10 of the Regulations replaces the requirements for when fund information is required to be provided in regulations 7.9.32(3) and (4) of the Corporations Regulations.

New regulation 7.9.32(3) of the Corporations Regulations requires the trustee of a superannuation entity to provide the periodic fund information report for the fund reporting period to a product holder as soon as practicable after the end of the fund reporting period to which it relates (and not later than three months after the end of the fund reporting period).

Item 10 of the Regulations reduces the timeframe for providing fund information from six months after the end of the reporting period to three months after the end of the reporting period. This change is considered appropriate given that the financial report, directors' report and auditor's report for the entity are required to be published within three months after the end of the financial year for the entity.

In accordance with regulation 7.9.32(2), a fund reporting period lasts for a period not exceeding one year (unless a longer period has been agreed by ASIC).

Item 6 – when an annual report (fund information) is required to be provided (transitional provision)

Regulation 2.38(2)(f) of the SIS Regulations (which is repealed by item 38 of the Regulations) required the RSE licensee of a registrable superannuation entity to make the annual report for the previous financial year publicly available on the entity's website at all times.

As mentioned above, item 6 of the Regulations inserts regulation 7.9.07ZB of the Corporations Regulations to replicate the requirements in regulation 2.38 of the SIS Regulations. However, regulation 7.9.07ZB of the Corporations Regulations does not replicate the requirement in regulation 2.38(2)(f) of the SIS Regulations (which required the trustee to publish the entity's annual report for the previous financial year). This is because the annual report (known from 1 July 2023 as the periodic fund information report) is required to be published on the entity's website in accordance with the requirements in regulation 7.9.32 of the Corporations Regulations.

However, to ensure continuity of requirements, item 6 of the Regulations also inserts the transitional provisions in regulations 7.9.07ZC(5), (6) and (7) of the Corporations Regulations.

Regulations 7.9.07ZC(5) and (6) of the Corporations Regulations provide that if, immediately before 1 July 2023, the trustee was required to publish an annual report for the previous financial year under section 29QB of the SIS Act, this information must be made publicly available throughout the period:

- starting on 1 July 2023; and

- ending on the day the entity publishes the periodic fund information report under regulation 7.9.32 of the Corporations Regulations.

The transitional provisions in regulations 7.9.07ZC(5) and (6) of the Corporations Regulations extend the operation of the existing obligation on trustees under regulation 2.38(2)(f) of the SIS Regulations to publish the annual report for the previous financial year on the entity's website. Accordingly, regulations 7.9.07ZC(5) and (6) of the Corporations Regulations do not create new obligations.

The purpose of these transitional provisions is ensure that there is no gap in the requirement to publish the annual report/periodic fund information report for the entity during the transition period before the new reporting requirements (in regulation 7.9.32 of the Corporations Regulations) take effect.

Regulation 7.9.07ZC(7) of the Corporations Regulations provides that the exceptions in regulations 7.9.07ZB(5), (6) and (7) of the Corporations Regulations relating to the publication of personal information about a beneficiary or a former beneficiary and information relating to standard employer-sponsored sub-plans, also apply to the annual report/periodic fund information report for the entity.

The purpose of regulation 7.9.07ZC(7) of the Corporations Regulations is to ensure that the exemptions that existed immediately before 1 July 2023 (in the ASIC Superannuation (RSE Websites) Instrument 2017/570) continue to apply in relation to the annual report/periodic fund information report under the new requirements.

Regulation 7.9.07ZC(8) of the Corporations Regulations requires the annual report/periodic fund information report provided for the purposes of regulation 7.9.07ZC(5) of the Corporations Regulations is readily accessible from the entity's website.

Items 12, 27, 28 and 29 – how fund information is required to be provided

Before 1 July 2023, the trustee of a superannuation entity (other than a self managed superannuation fund) may provide fund information to product holders by either:

- making it readily accessible from the entity's website and notifying product holders; or
- providing it to product holders in hard copy or electronic copy.

Item 12 of the Regulations inserts regulations 7.9.32(6), (7) and (8) of the Corporations Regulations.

Regulation 7.9.32(6) of the Corporations Regulations provides that the trustee of a superannuation entity must provide fund information to the holder by:

- making it publicly available on the entity's website; and
- if the product holder elects to receive fund information by hard copy or electronically – by sending a copy of the periodic fund information report to the holder in that form.

Regulation 7.9.32(7) of the Corporations Regulations requires the trustee to make the periodic fund information report readily accessible from the entity's website.

Regulation 7.9.32(8) of the Corporations Regulations clarifies that regulations 7.9.32(6) and (7) of the Corporations Regulations (to make periodic fund information reports readily accessible from the entity's website) does not apply to self managed superannuation funds.

Item 12 of the Regulations is intended to ensure that the requirements for providing periodic fund information reports are transparent and flexible to suit the specific needs of individual product holders.

Item 27 of the Regulations inserts regulation 7.9.75A(3)(e) of the Corporations Regulations, which provides that a periodic fund information report may be given to a product holder by making the information publicly available on the superannuation entity's website. This is intended to support and reinforce the amendments to regulation 7.9.32 of the Corporations Regulations (in item 12 of the Regulations).

Item 28 of the Regulations repeals regulation 7.9.75BA of the Corporations Regulations, given that the relevant requirements for providing periodic fund information reports are included in regulation 7.9.32 of the Regulations. The only difference under the new requirements is that the trustee of a superannuation entity is no longer required to notify product holders when it makes fund information available on its website. This is appropriate given that trustees must publish the periodic fund information report on the entity's website (where previously fund information was not required to be published on the entity's website) and are also required to include a copy of the most recent periodic fund information report with the notice of the annual members' meeting under section 29P(3) of the SIS Act.

Item 29 of the Regulations inserts new regulation 10.50.01 of the Corporations Regulations. Regulation 10.50.01(2) of the Corporations Regulations, which is an application provision, provides that despite the amendments to regulation 7.9.75BA of the Corporations Regulations (made by item 28 of the Regulations), an election by a product holder to receive the entity's periodic fund information report in hard copy or electronic copy made before 1 July 2023 continues to have effect after 1 July 2023. This ensures that product holders who request a copy of this information in hard copy or electronic copy before the commencement of the Regulations do not need to make a new election following the commencement of Schedule 1 to the Regulations in order to continue to receive a hard copy or electronic copy of the fund information.

Under regulation 7.9.32(6) of the Corporations Regulations, product holders are still able to make new elections (to receive the periodic fund information report in hard copy or electronic copy) on and after 1 July 2023.

Items 18 and 20 – fund information to be prepared for self managed superannuation funds

Item 18 of the Regulations moves the requirement in regulation 7.9.38, which relates to the information required to be prepared for self managed superannuation funds, to regulation 7.9.37(1A) of the Corporations Regulations.

Item 20 of the Regulations repeals regulation 7.9.38 of the Corporations Regulations.

Items 18 and 20 of the Regulations are intended to improve the readability of the law and do not alter or affect the operation or application of this requirement.

Items 17, 19, 23 and 24 – requirement to provide abridged financial information as part of fund information

Items 17, 19, 23 and 24 of the Regulations repeal regulations 7.9.37(1)(e), 7.9.37(5), 7.9.42(1)(c) and 7.9.42(4) of the Corporations Regulations to remove the requirements to provide:

- abridged financial information; and
- audited fund accounts and auditor’s reports.

Under the reforms, regulated superannuation funds, approved deposit funds and pooled superannuation trusts will no longer be required to prepare or publish abridged financial information for the purposes of Subdivisions 5.6 and 5.7 of Division 5 of Part 7.9 of the Corporations Regulations. This means that entities required to provide financial information cannot satisfy this obligation by providing abridged financial information. This improves transparency (by requiring the provision of full financial information) and also reduces regulatory burden by reducing the number of different types of information and documents that are required to be prepared for registrable superannuation entities.

Also, these amendments provide that trustees are no longer required to provide product holders audited accounts or auditor’s reports. This is because the RSE licensee for a registrable superannuation entity is already required to:

- publish audited financial reports for each financial year and auditor’s reports on the entity’s website under section 314AA of the Corporations Act;
- provide a copy of these reports to a concerned person on written request by the person under section 1017C(3AA) of the Corporations Act;
- include details on how to access the financial report, directors’ report and auditor’s report for a financial year with the notice of the annual members’ meeting under section 29P(3)(aa) of the SIS Act; and
- provide a copy of these reports to a person (other than a concerned person) on written request by the person under regulation 2.33 of the SIS Regulations (see item 37 of the Regulations).

These amendments do not alter the obligations imposed on RSE licensees, but are intended to improve the readability of the law by removing duplicative requirements.

Items 8, 9, 11, 13, 14, 15, 16, 21, 22, 25 and 26 – technical amendments to the requirements relating to fund information

Item 8 of the Regulations replaces the heading to regulation 7.9.32 of the Corporations Regulations with ‘Fund information must be provided in a periodic

fund information report for each fund reporting period'. This heading is intended to more accurately reflect the operation of the provision, and does not alter or affect the operation or application of regulation 7.9.32 of the Corporations Regulations.

Item 9 of the Regulations replaces regulation 7.9.32(1) of the Corporations Regulations to more clearly provide that, for the purposes of subsection 1017DA(1) of the Corporations Act, fund information must be provided to a product holder in a periodic fund information report for each fund reporting period during which the product holder holds the product. Item 9 of the Regulations corrects the reference to the Act (to refer to subsection 1017DA(1), rather than subsection 1017DA(2)) and to more clearly set out the nature of the obligation imposed on trustees. Item 9 of the Regulations does not alter or affect the application or operation of this provision.

Similarly, item 13 of the Regulations amends regulation 7.9.33 of the Corporations Regulations to:

- correct the reference to the Corporations Act (from subsection 1017DA(2) to subsection 1017DA(1)); and
- ensure consistent use of terminology by replacing the reference to a 'periodic fund report' with a 'periodic fund information report'.

Item 13 of the Regulations is intended to correct and clarify the law and does not alter or affect the application or operation of section 7.9.33 of the Corporations Regulations.

Items 11, 14, 15, 16, 21, 22, 25 and 26 of the Regulations amend regulations 7.9.32(5), 7.9.33(b), 7.9.35, 7.9.36, 7.9.37(1), 7.9.41, 7.9.42(1), 7.9.45(2) and 7.9.45(3) of the Corporations Regulations. These amendments are intended to clarify and simplify these provisions and do not alter or affect the operation or application of these provisions.

Item 29 – fund information (application provision)

Item 29 of the Regulations inserts regulation 10.50.01 of the Corporations Regulations. Regulation 10.50.01(1) of the Corporations Regulations is an application provision, which provides that the amendments made to Divisions 1, 5 and 8 of Part 7.9 of the Corporations Regulations by Schedule 1 to the Regulations (relating to fund information) apply in relation a fund reporting period that begins on, or after, 1 July 2023.

Amendments to the SIS Regulations

Items 30 - 35 – information to be included with annual members' meeting notice

Section 29P(3) of the SIS Act sets out the information that is required to be included in the notice of the annual members' meeting. This includes (but is not limited to):

- the financial report for the year of income of the entity;
- the directors' report for the year of income of the entity (including the remuneration details of key management personnel of the entity);

- the auditor’s report on the financial report for the year of income of the entity; and
- any other information required to be included with the notice prescribed by the regulations.

Regulation 2.10 of the SIS Regulations prescribes the information that must be included with the notice of an annual members’ meeting for a year of income.

Item 31 of the Regulations repeals regulation 2.10(1)(b)(iii) of the SIS Regulations, which requires the trustee to include with the notice of an annual members’ meeting the annual report for the previous year. This provision has been repealed as it duplicates the existing requirement in regulation 2.10(1)(d)(ii) of the SIS Regulations for the trustee to include the most recent periodic fund information report given under regulation 7.9.32 of the Corporations Regulations to product holders of the entity. Item 31 of the Regulations does not alter or affect the information that is required to be included with the notice of the annual members’ meeting.

Items 30 and 32 - 35 of the Regulations amend regulations 2.10(1) and 2.10(2) of the SIS Regulations to update the law to reflect the changes in Schedule 6 to the Act and these Regulations, but do not alter or affect the information required to be included with the notice of the annual members’ meeting.

Item 36 – redundant definitions

Item 36 of the Regulations repeals regulation 2.17 of the SIS Regulations to remove redundant definitions that are no longer required, and is not intended to affect the operation or application of the SIS Regulations.

Item 37 – information to be provided to persons other than concerned persons

Regulation 2.33 of the SIS Regulations requires the trustee of a superannuation entity (other than a self managed superannuation fund) to provide prescribed information to a person (other than a concerned person) on written request by the person.

Item 37 of the Regulations replaces the requirements in regulation 2.33(a), (b) and (c) of the SIS Regulations and provides that the trustee of a superannuation entity (other than a self managed superannuation fund) is required to provide a copy of the following documents to a person (other than a concerned person) on written request by the person:

- the most recent periodic fund information report given to product holders under regulation 7.9.32 of the Corporations Regulations; and
- the reports (if any) the entity is required to provide to members under subsection 314AA(1) of the Corporations Act at the time of the request.

Section 314AA(1) of the Corporations Act requires a registrable superannuation entity to report to members by making all of the following reports publicly available on the entity’s website within three months after the end of the financial year for the entity:

- the financial report for the financial year;
- the directors' report for the year; and
- the auditor's report on the financial report.

Item 37 does not alter the information that the trustee of a superannuation entity is required to give a person (other than a concerned person).

'Concerned person' is defined in section 1017C of the Corporations Act as a person who is, or was within the previous 12 months, a member of the superannuation entity or is a beneficiary of the superannuation entity. Consequently, a person (other than a concerned person) is any person who is not a concerned person. For example, a member of the general public.

Item 38 – publication of information and documents

Item 38 of the Regulations repeals regulations 2.37 and 2.38 of the SIS Regulations. This is a consequential amendment resulting from the repeal of section 29QB of the SIS Act by Schedule 6 to the Act.

The requirements in regulation 2.37 of the SIS Regulations have been re-made in regulation 2M.3.04 of the Corporations Regulations (see item 4 of the Regulations). A transitional provision in relation to the requirements in regulation 2M.3.04 is included in regulation 7.9.07ZC of the Corporations Regulations (see item 6 of the Regulations).

The requirements in regulation 2.38 of the SIS Regulations have been re-made in regulations 7.9.07ZB and 7.9.31A of the Corporations Regulations (see items 6 and 7 of the Regulations).

Items 39 - 43 – obligations of auditors and actuaries

Section 130 of the SIS Act imposes reporting obligations on individual auditors who form the opinion that the financial position of a superannuation entity may be, or may be about to become, unsatisfactory (that is, the entity is, or may become, insolvent).

Section 130AA of the SIS Act replicates these reporting obligations where the auditor of a registrable superannuation entity is an audit firm or an audit company (rather than an individual auditor).

Items 39 to 43 of the Regulations amend regulations 9.03 and 9.04 of the SIS Regulations to include references to the equivalent provisions in section 130AA of the SIS Act, wherever references are made to section 130 of the SIS Act.

These amendments are intended to reflect that, from 1 July 2023, audit firms and audit companies can also be appointed as the auditor of a registrable superannuation entity, where prior to this only individuals could be appointed as RSE auditor.