

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 the supervision by the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC), and the Commissioner of Taxation.

Section 353 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.

Subsection 29P(3) provides that regulations may prescribe information required to be included with an annual members' meeting notice.

The *Superannuation Industry (Supervision) Regulations 1994* (the Principal Regulations) prescribe matters in support of the Act. Regulation 2.10 of the Principal Regulations prescribes the information that must be included with a notice for an annual members' meeting. These annual members' meeting disclosure requirements ensure registrable superannuation entity (RSE) licensees provide meaningful information to members.

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.

Section 29P of the Act requires RSE licensees of certain registrable superannuation entities to hold annual meetings 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 certain stakeholders, including all members of the RSE, all responsible officers of a body corporate RSE licensee (if applicable), any person who has been auditor of the RSE for the year of income of the entity, and any person who has been an actuary of the RSE for the year of income of the entity. RSE licensees are required to include 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.

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

The Regulations update the annual members' meeting notice disclosure requirements to improve member outcomes by providing members with simple and clear information. This is achieved 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.

An amendment to permit RSE licensees to include contextual information in the short-form summary will provide RSE licensees with opportunity to explain aggregated expenditure disclosure for members, but is not intended to permit promotional material or information that will detract from the aggregated expenditure information which is the primary focus of the short-form summary.

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 seventh day after this instrument is registered on the Federal Register of Legislation.

The Office of Best Practice Regulation (OBPR) has advised that the amendments do not require a Regulatory Impact Statement because they have been assessed to have no more than a minor regulatory impact. The OBPR Reference Number is OBPR22-02488.

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 on the seventh day after this 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 Schedule to this instrument has effect according to its terms.

Schedule 1

Items 2 and 3 - Allowing contextual information in the short-form summary

Items 2 and 3 amend paragraph 2.10(1)(a) to remove a restriction on including any additional information in the short-form summary.

Item 2 amends paragraph 2.10(1)(a) of the Principal Regulations by removing “containing the information set out in subregulation (2), which must” and substitutes “that includes the information set out in subregulation (2) (but may also include other information) and that must”. This substitution is necessary to ensure that RSE licensees are allowed to include additional information in the short-form summary (as per Item 3).

Item 3 amends subparagraph 2.10(1)(a)(i) of the Principal Regulations, to remove the phrase “and be the only information on that page”, which restricts the information that can be contained in the short-form summary.

These amendments allow RSE licensees to include contextual information about the aggregated expenditure disclosed in the short-form summary. Contextual information explains the aggregated expenditure disclosed rather than serve some other purpose, such as promotion. The information should increase clarity for members, particularly where an RSE licensee is required to disclose a payment under multiple categories.

The contextual information should not detract from, or diminish, the disclosed aggregated expenditure, which is to remain the dominant content of the short-form summary. Contextual information should be clear and readable. There is no change to the requirement for the short-form summary to fit on a single page, which means that links from the summary to additional materials should not be included, in order to fulfil the content summary requirements.

The categories of expenditure required to be set out in the short-form summary included with annual members' meeting notices are not an exhaustive list of all fund expenditure. Each category should be considered separately, noting that some expenditure may be reported in more than one category. The intent is to highlight different categories of expenditure that may be of interest to members who may question RSE licensees about the expenditure at the annual members' meeting.

Items 4, 7 and 8 – Repealing the itemised disclosure of certain expenditure requirements

Item 4 repeals paragraph 2.10(1)(e) of the Principal Regulations, which sets out itemised disclosure requirements for promotion, marketing, and sponsorship expenditure.

Item 7 repeals paragraphs 2.10(1)(g), and (h) of the Principal Regulations, which set out itemised disclosure requirements for certain categories of expenditure. These categories include payments to industrial bodies and related party payments.

Item 8 repeals paragraphs 2.10(2)(b) to (e) of the Principal Regulations, and substitutes new paragraphs 2.10(2)(b) to (e). The Regulations ensure that with the repeal of the requirements to disclose itemised expenditure in former paragraphs 2.10(2)(e), (g) and (h), RSE licensees will still be required to disclose an *aggregate* figure for each of these categories of expenditure in the short-form summary that paragraph 2.10(1)(a) of the Principal Regulations requires. Consistent with the current requirement, RSE licensees will also need to disclose aggregate political donations expenditure in the short-form summary.

It should be noted that for the purposes of promotion, marketing, or sponsorship expenditure, any agreement to make a payment in exchange for a good or service is a contract, and expenditure under such contracts would need to be disclosed accordingly.

Retaining disclosure of aggregated expenditure amounts in the information that must be included with annual members' meeting notices in accordance with new paragraphs 2.10(2)(b) to (e) will ensure that members are informed ahead of the meeting, whilst also protecting the commercial sensitivity of payments and reducing compliance costs.

Retaining itemised disclosure of political donations in paragraph 2.10(1)(f) of the Principal Regulations ensures additional transparency around this category of expense. Item 8 inserts new paragraph 2.10(2)(b) that amends language from the former paragraph 2.10(2)(c) to refer to "gifts" instead of "payments". This aligns the disclosure of political donations in the short-form summary with the itemised

disclosure of political donations and clarifies that aggregated political donations expenditure disclosed should include non-monetary gifts.

Item 8 – Preventing the double-counting of political donation expenditure

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

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

The substituted subparagraphs in 2.10(2)(c) that Item 8 of the Regulations inserts, clarify the Principal Regulations by expressly excluding gifts, as defined in Part XX of the *Commonwealth Electoral Act 1918*, from the requirement to disclose this expenditure in aggregate promotion, marketing, and sponsorship expenditure. This change removes the double-counting of expenditure where disclosure is categorised by the purpose of the payment.

While this change reduces double-counting of political donations, the categories of expenditure that otherwise must be disclosed in the short-form summary included with the annual members' meeting notices, are not intended to be an exhaustive or mutually exclusive list of all fund expenditure.

Items 1, 8 and 9 – Aligning the definition of 'related party' to the definition in the Australian Accounting Standards

RSE licensees are required to disclose payments made to certain related parties. Former paragraph 2.10(1)(h) of the Principal Regulations sets out a list of entities as they relate to the RSE licensee. To reduce complexity, the Regulations instead define 'related party' consistently 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 9 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 in substituted new paragraph 2.10(2)(e) that Item 8 inserts. This means that a payment is a related party payment if, at the time of the payment, the payment was made by, or on behalf of, the entity to a related party as defined under the Standard.

Item 5 – Updating political donation terminology

Item 5 amends subparagraph 2.10(1)(f)(ii) to remove reference to a ‘political campaigner’ and substitutes ‘significant third party’. This amendment replaces an outdated term, and reflects recent amendments to the *Commonwealth Electoral Act 1918*.

Items 6 and 10 – Consequential amendments

Item 6 amends paragraph 2.10(1)(f) to remove a semicolon and substitutes a full stop at the end of the paragraph. This is a consequential amendment to update the punctuation in subregulation 2.10(1) of the Principal Regulations as Item 7 repeals paragraphs 2.10(1)(g) and (h).

Item 10 amends subregulation 2.10(3) to omit the references to paragraph “(1)(b) to (h)” and substitutes “(1)(b), (c), (d) or (f)”. This is a consequential amendment to remove references to paragraphs that are repealed by Items 4 and 7.

Item 11 – Transitional arrangements

Item 11 inserts new Division 14.31 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 regulation 14.33, and
 - b) the year of income ends on or after 30 June 2022.

The effect of this provision is that the amendments apply 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 support improved member outcomes, by clarifying certain aspects of disclosure requirements. This is achieved 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.