

## **EXPLANATORY STATEMENT**

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

*Corporations Act 2001*  
*Superannuation Industry (Supervision) Act 1993*  
*Treasury Laws Amendment (Financial Reporting and Auditing of Registrable Superannuation Entities) Regulations 2023*

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

Paragraph 300C(1)(a) of the Corporations Act provides for regulations to prescribe details in relation to the remuneration of each of the key management personnel of the registrable superannuation entity (RSE) that must be included in the directors' report.

Paragraph 1017DA(1)(a) of the Corporations Act provides for regulations to 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.

Paragraph 29P(3)(b) of the SIS Act provides for regulations to prescribe the information that must be included with the notice of an annual members' meeting.

The purpose of the *Treasury Laws Amendment (Financial Reporting and Auditing of Registrable Superannuation Entities) Regulations 2023* (the Regulations) is 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 RSEs. The purpose of these amendments is to impose financial reporting and auditing obligations on RSEs that are consistent with the requirements that apply to public companies and registered schemes.

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

Neither the Corporations Act, nor the SIS Act, specify any conditions that need to be satisfied before the powers to make the Regulations may be exercised.

Public consultation on the draft regulations took place between 11 April and 5 May 2023. Treasury received five written submissions from industry associations, which resulted in the following amendments being made to the draft regulations:

- replacing all of the references to ‘1 July 2023’ in the Regulations with references to either ‘the day Schedule 6 to the Act commenced’ or ‘the day the Regulations commenced’ to allow for flexibility in the commencement of the legislation;
- streamlining regulation 2M.3.04 of the Corporations Regulations to only require disclosure of remuneration details relating to the ‘most recently completed financial year’ (rather than also to the ‘current financial year’ or the ‘two most recently completed financial years’);
- amending the transitional provisions in regulation 7.9.07ZC of the Corporations Regulations to ensure that there is no gap in the disclosure of remuneration details prior to the commencement of the new requirement to publish the annual directors’ report;
- renaming ‘periodic fund information report’ to ‘fund information’, to better align the law with industry terminology and to reflect that this information is not required to be provided in a single ‘report’ format;
- reverting to the existing timeframe for providing ‘fund information’ of six months (rather than three months), to reflect industry feedback on the impact of this obligation on compliance burden for superannuation funds; and
- updating and clarifying the information that is required to be included in the notice of an annual members’ meeting.

The Regulations are exempt from sunseting in accordance with items 18 and 59A of regulation 12 of the Legislation (Exemptions and Other Matters) Regulation 2015, which is made for the purposes of paragraph 54(2)(b) of the *Legislation Act 2003*. The Regulations are subject to disallowance.

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

The Regulations commenced on the later of:

- the start of the day after this instrument was 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* commenced.

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

A statement of Compatibility with Human Rights is at [Attachment B](#).

The Office of Impact Analysis (OIA) has been consulted (OIA ref: 24849) and agreed that the Financial Services Royal Commission Final Report has been certified as a process equivalent to an Impact Analysis. The Final Report can be accessed from the Australian Parliament House website (see: <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2Fbc83795c-b7fa-4b42-a93b-fa012cffffc2%22>). The measure is estimated to have a low impact on compliance costs.

**Details of the *Treasury Laws Amendment (Financial Reporting and Auditing of Registrable Superannuation Entities) Regulations 2023***

**Section 1 - Name of the Regulations**

This section provides that the name of the Regulations is the *Treasury Laws Amendment (Financial Reporting and Auditing of Registrable Superannuation Entities) Regulations 2023* (the Regulations).

**Section 2 - Commencement**

This section provides that Schedule 1 to the Regulations commenced on the later of:

- the start of the day after this instrument was 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* commenced.

**Section 3 - Authority**

This section provides that the Regulations are made under the following Acts:

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

**Section 4 - Schedule**

This section provides that each instrument that is specified in the Schedule to this instrument is 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**

Subsection 319(1) of the Corporations Act provides that a registrable superannuation entity (RSE) 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).

RSEs, within the meaning of Chapter 2M of the Corporations Act (see the definition of ‘registrable superannuation entity’ in section 9 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 new paragraph 1.0.08(1)(e) into the Corporations Regulations, which prescribes that a document lodged for an RSE with ASIC, for the purposes of subsection 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 for registered schemes in paragraph 1.0.08(1)(c) of the Corporations Regulations.

Item 2 of the Regulations inserts new subregulation 1.0.16(4) into the Corporations Regulations, which provides that, for a document relating to an RSE 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 RSEs. 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 RSEs because of the exemption in the *Australian accounting standard AASB 10: Consolidated Financial Statements* (AASB 10).

Subsection 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 subregulation 2M.3.01(3) of the Corporations Regulations to include an RSE 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 RSEs 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 RSEs to prepare consolidated financial statements.

#### **Items 4 and 6 – disclosing 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 RSE to make publicly available and keep up to date at all times on the RSE’s website the remuneration details prescribed by the regulations.

Regulation 2.37 of the SIS Regulations, which was made for the purposes of paragraph 29QB(1)(a) of the SIS Act, prescribed the details of the remuneration of an executive officer of the RSE licensee and each individual trustee of an RSE.

Item 4 of the Regulations inserts new regulation 2M.3.04 into the Corporations Regulations for the purposes of paragraph 300C(1)(a) of the Corporations Act. Regulation 2M.3.04 largely 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 four differences between the requirements that were in regulation 2.37 of the SIS Regulations and the new requirements that are in regulation 2M.3.04 of the Corporations Regulations, these are:

- regulation 2.37 used three different timeframes for the remuneration details that were required to be disclosed (‘the current financial year’, ‘the most recently completed financial year’ and ‘the 2 most recently completed financial years’) - new regulation 2M.3.04 has been streamlined and provides that all disclosures should be made in relation to the most recently completed financial year.
  - This change reflects the fact that this information is required to be published annually in the director’s report for the entity, and that copies of past directors’ reports will be available on the entity’s website.
  - This change will not only reduce regulatory burden but will also improve the readability and consistency of the information (because all of the details contained in the report will relate to the same 12 month period).
- regulation 2.37 required remuneration details to be published on the entity’s website and kept up to date at all times – new regulation 2M.3.04 requires the

prescribed remuneration details to be included in the directors' report for the entity 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. Section 1684 of the Corporations Act provides that the new reporting requirements begin to apply in relation to the financial year for the entity that commences on or after 1 July 2023.
- This means that:
  - if an RSE's 2023/24 financial year commenced *before* 1 July 2023 (for example, on 1 April 2023), the RSE must publish its first directors' report within three months after the end of its 2024/25 financial year (that is, by the end of June 2025); or
  - if an RSE's 2023/24 financial year commenced *on or after* 1 July 2023, the RSE must publish its first directors' report within three months after the end of its 2023/24 financial year – that is:
    - if the RSE's 2023/24 financial year began on 1 July 2023, the first directors' report must be published by the end of September 2024; or
    - if the RSE's 2023/24 financial year began on 1 October 2023, the first directors' report must be published by the end of December 2024.
- regulation 2.37 applied to executive officers of the RSE licensee or to trustees of an RSE - new regulation 2M.3.04 applies to each member of the key management personnel of the RSE; 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 required the trustee to report remuneration provided by a 'related entity' of the RSE – new regulation 2M.4.03 replaces the reference to a 'related entity' with the term 'related party', which is to be defined in accordance with AASB 124. This amendment is intended to provide greater clarity to the law, without substantially modifying the operation of this obligation.

#### *Transitional provision – disclosing remuneration details*

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

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

Subregulation 7.9.07ZC(2) of the Corporations Regulations provides that this transitional provision only applies to RSEs 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.

Subregulations 7.9.07ZC(3) and (4) of the Corporations Regulations require that, if, immediately before Schedule 6 to the Act commenced, the trustee of a superannuation entity was required to publish remuneration details under paragraph 29QB(1)(a) of the SIS Act, the trustee must continue to publish those details on the entity's website during the period:

- starting from – the day the Regulations commenced; and
- ending on – the day before the remuneration details for the entity's 2022/23 financial year are published on the entity's website.

Subregulations 7.9.07ZC(3) and (4) do not impose a new obligation, and only apply to:

- trustees of superannuation entities that were already required to comply with paragraph 29QB(1)(a) of the SIS Act immediately before Schedule 6 to the Act commenced; and
- the extent that remuneration details were required to be published immediately before Schedule 6 to the Act commenced - trustees would not be required to update the information on the RSE's website, or publish any new or additional remuneration details, during this period.

In addition to this, subregulations 7.9.07ZC(5) and (6) of the Corporations Regulations also require the trustee of an RSE to publish on the entity's website the information prescribed by new regulation 2M.3.04 of the Corporations Regulations for the 2022/23 financial year of the entity during the period:

- starting from – the day that is the later of:
  - three months after the last day of the 2022/23 financial year for the entity; and
  - three months after the day the Regulations commenced; and
- ending on – the day before the entity's directors' report is first published on the RSE's website in accordance with section 314AA of the Corporations Act (that is, within three months after the end of the financial year for the entity that commences on or after 1 July 2023).

The new obligation in subregulations 7.9.07ZC(5) and (6) of the Corporations Regulations will not require trustees to update the prescribed remuneration details after they have been published. Also, the start date for this requirement ensures that, at a minimum, all RSEs

have at least three months from the commencement of the Regulations to comply with this obligation.

The remuneration details required to be published under subregulations 7.9.07ZC(4) and (6) must be readily accessible from the entity's website.

Trustees of RSEs must comply with all of the obligations in subregulations 7.9.07ZC(3) to (6) of the Corporations Regulations. The purpose of these transitional provisions is to ensure that there is no gap in the disclosure of remuneration details of key management personnel of RSEs prior to the commencement of the new disclosure obligations under section 300C of the Corporations Act and regulation 2M.3.04 of the Corporations Regulations.

### **Item 6 – publication of other information and documents on the entity's website**

Paragraph 29QB(1)(b) of the SIS 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.

This was supplemented by an ASIC legislative instrument (ASIC Superannuation (RSE Websites) Instrument 2017/570), which 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 into the Corporations Regulations.

Subregulation 7.9.07ZB(1) provides that this regulation is made for the purposes of paragraph 1017DA(1)(a) of the Corporations Act. Subregulation 7.9.07ZB(2) (which only applies to trustees of RSEs) requires the trustee of a superannuation entity to provide the holder of a superannuation product with information relating to the entity and any relevant sub-plan, in accordance with subregulation 7.9.07ZB(3) of the Corporations Regulations.

The table under subregulation 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 paragraphs 2.38(2)(i), (j) and (k) of the SIS Regulations are not included in the table under subregulation 7.9.07ZB(3) of the Corporations Regulations. Instead, this information is required to be included in the entity's fund information under new regulation 7.9.31A of the Corporations Regulations (see item 7 of the Regulations); and
- the requirement in paragraph 2.38(2)(f) of the SIS Regulations to publish an annual report has been removed to avoid duplication with the requirement to publish the entity's fund information under regulation 7.9.32 of the Corporations Regulations.

Neither of these differences (between subregulation 2.38(2) of the SIS Regulations and new subregulation 7.9.07ZB(3) of the Corporations Regulations) alter the substantive obligations that apply to trustees of superannuation entities.



The information and documents prescribed by subregulation 7.9.07ZB(3) of the Corporations Regulations must be published either:

- if, immediately before the day Schedule 6 to the Act commenced, the information or documents were required to be made publicly available under paragraph 29QB(1)(b) of the SIS Act – from the day the Regulations commenced; or
- otherwise – from the time specified in the table under subregulation 7.9.07ZB(3) of the Corporations Regulations.

Where information or documents were not required to be published on the entity's website immediately before Schedule 6 to the Act commenced, the timing for publication is specified in the table in subregulation 7.9.07ZB(3) of the Corporations Regulations. This timing largely replicates the requirements in the ASIC Superannuation (RSE Websites) Instrument 2017/570. This means that, for all of the items in the table in subregulation 7.9.07ZB(3) (with the exception of items 6 and 14), the prescribed information or documents need be published on the RSE's website no later than 20 business days after the relevant day or event (or the day the information or document 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 in relation to the most recently completed 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 on the next business day after 31 August. This description can be removed from the website one business day after the following 31 August.

For example:

- if an RSE is found to have failed the performance test for the 2024/25 financial year (but passes the performance test in the 2025/26 financial year):
  - APRA notifies the trustee of the entity's failure on 28 August 2025;
  - the trustee must publish a description of the relevant circumstances on the next business day after 31 August 2025 (that is, 1 September 2025); and
  - the trustee may remove the description of the relevant circumstances on the next business day after the following 31 August (that is, 1 September 2026).
- if an RSE is found to have failed the performance test for the 2028/29 financial year (and also fails performance test in the 2029/30 financial year):
  - APRA notifies the trustee of the entity's failure on 29 August 2029, the trustee must publish a description of the relevant circumstances on the next business day after 31 August 2029 (that is, 3 September 2029); and

- APRA notifies the trustee of the entity’s failure on 30 August 2030, the trustee must remove the ‘old’ description on the RSE’s website and publish the new description on 2 September 2030.

Item 14 of the table in subregulation 7.9.07ZB(3) of the Corporations Regulations provides that the trustee must publish the annual financial statement for the previous financial year on the day the trustee is first required to lodge the statement with ASIC under Part 7.6 of the Corporations Act.

Subregulation 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.

### ***Exceptions***

The ASIC Superannuation (RSE Websites) Instrument 2017/570 included exemptions that applied to the publication of the following information or documents for the purposes of paragraph 29QB(1)(b) of the SIS Act:

- the entity’s trust deed (paragraph 2.38(2)(a) of the SIS Regulations);
- the governing rules (paragraph 2.38(2)(b) of the SIS Regulations);
- the most recent actuarial report for each defined benefit fund (paragraph 2.38(2)(d) of the SIS Regulations);
- the most recent product disclosure statement for each superannuation product offered by the entity (paragraph 2.38(2)(e) of the SIS Regulations);
- the annual report for the previous financial year (paragraph 2.38(2)(f) of the SIS Regulations); and
- each significant change event or material change notice made to members in the previous two years (paragraph 2.38(2)(h) of the SIS Regulations).

The ASIC instrument is being repealed as a consequence of the repeal of section 29QB of the SIS Act (and regulations 2.37 and 2.38 of the SIS Regulations). Consequently, subregulations 7.9.07ZB(5) to (7) 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 that document that has been redacted to exclude personal information relating to a beneficiary or former beneficiary; and
  - ‘Personal information’ has the same meaning as in the *Privacy Act 1988*.
- where a document 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:

- until 1 July 2024 – making available a version of the document that has been redacted to exclude information that only relates to the RSE 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.

Subregulation 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 subparagraph 18(1)(a)(ii)(B) of the SIS Act.

As with the ASIC instrument, the exemptions in subregulations 7.9.07ZB(5) – (7) of the Corporations Regulations apply to the following types of information or documents:

- the entity’s trust deed (item 1 of the table in subregulation 7.9.07ZB(3));
- the governing rules (item 2);
- the most recent actuarial report for each defined benefit fund, as required under RSE licensee law (item 4);
- the most recent product disclosure statement (or supplementary or replacement product disclosure statement) for the product (item 5); and
- each significant change event or material change notice made to members in the previous two years (item 8).

The exemptions also apply to the RSE’s annual report for the previous financial year, while this document is required to remain on the RSE’s website, under the transitional provisions in subregulations 7.9.07ZC(7) and (8) of the Corporations Regulations (see the description of these provisions below).

Like the ASIC instrument (which was exempt from sunseting under item 6 of regulation 11 of Legislation (Exemptions and Other Matters) Regulation 2015), the Regulations are also exempt from sunseting (under item 18 of regulation 12 of the Legislation (Exemptions and Other Matters) Regulation 2015).

The exemptions are considered necessary to protect the privacy of individuals (beneficiaries and former beneficiaries of RSEs) by removing the requirement for trustees to disclose personal information. Also, as the information and documents to which these exemptions apply are prescribed in regulations (in subregulation 7.9.07ZB(3) of the Corporations Regulations), it is considered appropriate that the exemptions are also included in regulations.

## **Item 6 – transitional provision – RSE’s annual report for the previous financial year**

Paragraph 2.38(2)(f) of the SIS Regulations, which was made for the purposes of paragraph 29QB(1)(b) of the SIS Act, required the RSE licensee of an RSE 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 new regulation 7.9.07ZB of the Corporations Regulations, which largely replicates the requirement to publish any other information and documents in regulation 2.38 of the SIS Regulations. However, also as mentioned above, subregulation 7.9.07ZB(3) of the Corporations Regulations does not replicate the requirement in regulation 2.38(2)(f) of the SIS Regulations to publish the entity’s annual report for the previous financial year.

Item 6 of the Regulations inserts new subregulations 7.9.07ZC(7) to (9) into the Corporations Regulations. Subregulations 7.9.07ZC(7) to (9) are transitional provisions that are intended to ensure the continuity of requirements following the commencement of the Regulations.

Subregulations 7.9.07ZC(7) and (8) of the Corporations Regulations provide that, if, immediately before the day Schedule 6 to the Act commenced, the trustee was required to publish an annual report for the previous financial year under paragraph 29QB(1)(b) of the SIS Act, this same report must continue to be readily accessible from the entity’s website during the period:

- starting from – the day the Regulations commenced; and
- ending on - the day the entity next provides fund information under regulation 7.9.32 of the Corporations Regulations.

The transitional provisions in subregulations 7.9.07ZC(7) and (8) of the Corporations Regulations do not impose a new obligation on trustees, but simply require the trustee to ensure that a copy of the RSE’s annual report for the previous financial year, which was required to be published immediately before Schedule 6 to the Act commenced, remains available on the entity’s website until fund information for the entity is next published on the entity’s website.

Subregulation 7.9.07ZC(9) of the Corporations Regulations provides that, if an annual report is required to be published under subregulations 7.9.07ZC(7) and (8) of the Corporations Regulations, the annual report will continue to be subject to the exemptions in subregulations 7.9.07ZB(5) to (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). This ensures consistency by providing that the exemptions that previously applied (under the ASIC instrument) to the publication of the RSE’s annual report continue to apply while the annual report remains required to be published on the entity’s website.

## **Item 5 – definition of fund information**

Fund information was defined in subregulation 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 subregulation 7.9.01(1) of the Corporations Regulations to mean information required to be given under Subdivision 5.5 of Division 5 of Part 7.9 of the Corporations Regulations.

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

## **Item 7 – content of fund information**

Item 7 of the Regulations inserts new regulation 7.9.31A into the Corporations Regulations, which is made for the purposes of paragraph 1017DA(1)(a) of the Corporations Act.

Regulation 7.9.31A 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 fund information:

- 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, if the member is a trustee or a board member, 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).

In accordance with regulation 7.9.31 of the Corporations Regulations, regulation 7.9.31A of the Corporations Regulations only applies to regulated superannuation funds, approved deposit funds and pooled superannuation trusts. The requirements in paragraphs 7.9.31A(a), (b) and (c) of the Corporations Regulations do not apply to self managed superannuation funds.

The purpose of item 7 of the Regulations is to move the existing obligation to publish the information prescribed in paragraphs 2.38(2)(i), (j) and (k) of the SIS Regulations to new regulation 7.9.31A of the Corporations Regulations and does not impose a new obligation on trustees.

However, unlike the requirement that was in paragraph 2.38(2)(i) of the SIS Regulations, new paragraph 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 fund information is required to be published annually.

### **Item 10 – when fund information is required to be provided**

Item 10 of the Regulations replaces subregulation 7.9.32(3) of the Corporations Regulations. New subregulation 7.9.32(3) of the Corporations Regulations requires trustees to provide fund information for a fund reporting period to members, as soon as practicable (which must be within six months) after the end of the reporting period by:

- for any fund reporting periods that begin *before* the Regulations commenced – providing fund information to members directly via hard copy or electronic copy (if the holder has made an election), *or* by making the information available on the entity’s website; and
- for all of the fund reporting periods that begin *on and after* the Regulations commenced – making fund information available on the entity’s website *and* by providing the information to members directly via hard copy or electronic copy (if a holder has made an election).

The Regulations have not changed the timeframe for providing fund information to members (within six months after the end of the fund reporting period for the entity).

Item 10 of the Regulations also repeals subregulation 7.9.32(4) of the Corporations Regulations to reflect that, under the new arrangements, fund information is always required to be published on the entity’s website, therefore, it is no longer accurate to say that fund information is only required to be given to product holders.

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

Regulation 7.9.75BA of the Corporations Regulations (which was made for the purposes of paragraph 1017DA(1)(a) of the Corporations Act) provided that the trustee of a superannuation entity (other than a self managed superannuation fund) could provide fund information to product holders by either:

- providing it to product holders in hard copy or electronic copy (if the product holder has made an election); or

- making it readily accessible from the entity’s website.

Item 28 of the Regulations repeals regulation 7.9.75BA of the Corporations Regulations. Instead, the requirements on how fund information must be provided are included in regulation 7.9.32 of the Corporations Regulations.

Item 12 of the Regulations inserts new subregulations 7.9.32(6), (7) and (8) of the Corporations Regulations to replace (and amend) the requirements that were in regulation 7.9.75BA of the Corporations Regulations.

Subregulation 7.9.32(6) of the Corporations Regulations provides that the trustee of a superannuation entity must provide fund information to a product 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 – sending the fund information to the holder in that form.

Subregulation 7.9.32(7) of the Corporations Regulations requires the trustee to make fund information readily accessible from the entity’s website.

Subregulation 7.9.32(8) of the Corporations Regulations clarifies that subregulations 7.9.32(6) and (7) of the Corporations Regulations (the requirements for making fund information accessible) do not apply to self managed superannuation funds.

Item 12 of the Regulations is intended to ensure that the requirements for providing fund information are transparent and flexible enough to meet the needs of product holders.

In accordance with regulation 7.9.33 of the Corporations Regulations, fund information can continue to be provided in two or more documents.

#### *Application provision*

Item 29 of the Regulations inserts new regulation 10.50.01 of the Corporations Regulations. Subregulation 10.50.01(2) is an application provision, which provides that, despite the repeal of regulation 7.9.75BA of the Corporations Regulations, an election by a product holder to receive fund information in hard copy or electronic copy made before the Regulations commenced continues to have effect after the Regulations commenced. This ensures that product holders who have already made an election, do not need to make a new election following the commencement of the Regulations in order to continue to receive a hard copy or electronic copy of fund information.

Subregulation 7.9.32(6) of the Corporations Regulations clarifies that product holders will also continue to have the right to make elections (to receive fund information in hard copy or electronic copy) after the Regulations commenced.

#### *Consequential amendments*

Item 27 of the Regulations inserts new paragraph 7.9.75A(3)(e) into the Corporations Regulations to provide that fund information may be provided to product holders by making the information publicly available on the superannuation entity’s website. This is intended to support and reinforce the requirement in regulation 7.9.32 of the Corporations

Regulations, which requires trustees to make fund information readily accessible from the entity's website.

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

Regulation 7.9.38 of the Corporations Regulations (which was made for the purposes of subsection 1017DA(1) of the Corporations Act) provided that fund information for a self managed superannuation fund must include only the information mentioned in paragraph 7.9.37(1)(p) of the Corporations Regulations.

Item 20 of the Regulations repeals regulation 7.9.38 of the Corporations Regulations. Item 18 of the Regulations inserts subregulation 7.9.37(1A) of the Corporations Regulations, which replicates the requirement in regulation 7.9.38 of the Corporations Regulations.

Items 18 and 20 of the Regulations are intended to improve the structure and readability of the law.

### **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 paragraph 7.9.37(1)(e), subregulation 7.9.37(5), paragraph 7.9.42(1)(c) and subregulation 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 RSEs.

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 RSE is already required to:

- publish audited financial reports for each financial year and an auditor's reports on the entity's website under section 314AA of the Corporations Act;
- provide a copy of the audited financial report and auditor's report for the entity to a concerned person on written request by the person under subsection 1017C(3AA) of the Corporations Act;



- include links to the RSE’s financial report, directors’ report and auditor’s report for a financial year with the notice of an annual members’ meeting under paragraph 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 for each fund reporting period’. This heading is intended to more accurately reflect the operation of the provision, and does not alter the application or operation of regulation 7.9.32 of the Corporations Regulations.

Item 9 of the Regulations replaces subregulation 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 for each fund reporting period during which the product holder holds the product. Item 9 of the Regulations does not alter the application or operation of this provision but is intended to:

- correct the reference to the Act (to refer to subsection 1017DA(1), rather than subsection 1017DA(2)); and
- more clearly state the nature of the obligation imposed on trustees.

Similarly, item 13 of the Regulations does not alter the application or operation of regulation 7.9.33 of the Corporations Regulations, but instead makes amendments intended 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 ‘fund information’.

Items 11, 14, 15, 16, 21, 22, 25 and 26 of the Regulations amend or repeal subregulation 7.9.32(5), paragraph 7.9.33(b), regulations 7.9.35 and 7.9.36, subregulation 7.9.37(1), regulation 7.9.41 and subregulations 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 the application or operation of these provisions.

### **Item 29 – fund information (application provision)**

Item 29 of the Regulations inserts new regulation 10.50.01 of the Corporations Regulations. Subregulation 10.50.01(1) of the Corporations Regulations is an application

provision, which provides that the amendments to Divisions 1, 5 and 8 of Part 7.9 of the Corporations Regulations made by the Regulations (relating to fund information) apply in relation to a fund reporting period that begins on or after the Regulations commenced.

This means that:

- for fund reporting period(s) that began *before* the Regulations commenced - trustees must continue to comply with the previous requirements (as they applied before the Regulations commenced); and
- for all fund reporting periods that begin *on or after* the Regulations commenced – trustees must comply with the new requirements for fund information in these Regulations. For example, this will require fund information to include the information prescribed in regulation 7.9.31A of the Corporations Regulations, and for fund information to always be made publicly available on the entity’s website.

#### *Amendments to the SIS Regulations*

#### **Items 30 - 35 – information to be included with annual members’ meeting notice**

Subsection 29P(3) of the SIS Act sets out the information that is required to be included in the notice of an annual members’ meeting.

Paragraph 29P(3)(aa) of the SIS Act provides that links to each of the following reports that are publicly available on the RSE’s website must be included with the notice of an annual members’ meeting:

- 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.

In accordance with section 314AA of the Corporations Act, an RSE is required to publish the financial report, directors’ report and auditor’s report within three months after the end of the financial year of the entity. Section 1684 of the Corporations Act states that the requirements to prepare, lodge and publish these reports start to apply in relation to the financial year (for the entity) that begins on or after 1 July 2023.

This means that the requirement in paragraph 29P(3)(aa) to include links to these reports with the notice of an annual members’ meeting applies from the time these reports are first required to be published on the RSE’s website in accordance with section 314AA of the Corporations Act.

Paragraph 29P(3)(b) of the SIS Act also provides that the RSE licensee must include with the notice any other information prescribed by the regulations.

Regulation 2.10 of the SIS Regulations (which is made for the purposes of paragraph 29P(3)(b) of the SIS Act) 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 amends subparagraph 2.10(1)(b)(ii) of the SIS Regulations to replace the references to ‘regulation 2.37’ and ‘subsection 29QB(1) of the Act’ with references to ‘subregulations 7.9.07Z(3) or (5)’ and to regulations made for the purposes of ‘section 300C of the Corporations Act’. This reflects:

- the repeal of section 29QB of the SIS Act (by Schedule 6 to the Act);
- the repeal of regulation 2.37 of the SIS Regulations (see item 38 of the Regulations);
- the insertion of regulation 2M.3.04 of the Corporations Regulations (which is made for the purposes of paragraph 300C(1)(a) of the Corporations Act) (see item 4 of the Regulations); and
- the insertion of the transitional provisions (made for the purposes of paragraph 1017DA(1)(a) of the Corporations Act) relating to the publication of remuneration details in subregulations 7.9.07ZC(3) to (6) of the Corporations Regulations (see item 6 of the Regulations).

Item 32 of the Regulations repeals subparagraph 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 subparagraph 2.10(1)(d)(ii) of the SIS Regulations for the trustee to include the most recent fund information given under regulation 7.9.32 of the Corporations Regulations to product holders of the entity.

Items 30, 33, 34 and 35 of the Regulations amend subregulation 2.10(1) of the SIS Regulations to update the law to reflect the changes in Schedule 6 to the Act and these Regulations, but do not otherwise alter what information is required to be included with the notice of an 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 alter the application or operation 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 paragraphs 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 fund information provided 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.

Subsection 314AA(1) of the Corporations Act requires an RSE 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 of the Regulations 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). Transitional requirements relating to the disclosure of remuneration details are prescribed in subregulations 7.9.07ZC(3) to (6) 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). See also the transitional provision relating to the publication of the annual report for the previous financial year in subregulations 7.9.07ZC(7) to (9) of the Corporations Regulations.

### **Items 39 and 40 – 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).

Schedule 6 to the Act inserted section 130AA of the SIS Act, which replicates the reporting obligations in section 130 of the SIS Act to apply where the auditor of the RSE is an audit firm or an audit company (rather than an individual auditor).

Subsections 130(7) and 130AA(12) of the SIS Act provide that the financial position of an entity is taken to be unsatisfactory if, under the regulations, the financial position of the entity is treated as unsatisfactory.

Items 39 and 40 of the Regulations amend regulation 9.04 of the SIS Regulations to reflect the insertion of section 130AA of the SIS Act by Schedule 6 to the Act.

These amendments are intended to reflect that, after the commencement of Schedule 6 to the Act, audit firms and audit companies can also be appointed as the auditor of an RSE, where prior to this only individuals could be appointed as RSE auditor.

**Statement of Compatibility with Human Rights**

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

**Treasury Laws Amendment (Financial Reporting and Auditing of Registrable Superannuation Entities) Regulations 2023**

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 *Treasury Laws Amendment (Financial Reporting and Auditing of Registrable Superannuation Entities) Regulations 2023* (the Regulations) is to 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 2001* (Corporations Act), the *Australian Securities and Investments Commission Act 2001*, and the *Superannuation Industry (Supervision) Act 1993* to extend and adapt the financial reporting and auditing requirements in Chapter 2M of the Corporations Act to apply to registrable superannuation entities (RSEs). The purpose of these amendments is to impose financial reporting and auditing obligations on RSEs that are consistent with the requirements that apply to public companies and registered schemes.

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

**Human rights implications**

This legislative instrument engages the right to protection from unlawful or arbitrary interference with privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR) because it provides that trustees can comply with their obligation to publish specified information and documents on the RSE's website (under regulation 7.9.07ZB of the Corporations Regulations) by making available versions of these documents that have been redacted to exclude personal information (within the meaning of the *Privacy Act 1988*) in relation to beneficiaries or former beneficiaries of the RSE.

This exemption will apply in relation to the publication of the following information and documents:

- the entity's trust deed (item 1 of the table in subregulation 7.9.07ZB(3));
- the governing rules (item 2 of the table in subregulation 7.9.07ZB(3));

- the most recent actuarial report for each defined benefit fund, as required under RSE licensee law (item 4 of the table in subregulation 7.9.07ZB(3));
- the most recent product disclosure statement (or supplementary or replacement product disclosure statement) for the product (item 5 of the table in subregulation 7.9.07ZB(3));
- each significant change event or material change notice made to members in the previous two years (item 8 of the table in subregulation 7.9.07ZB(3)); and
- the RSE's annual report for the previous financial year, which is required to be published under the transitional provisions in subregulations 7.9.07ZC(7) and (8) of the Corporations Regulations.

Prior to the commencement of the Regulations, the publication of this information and documents was subject to the same exemption in the ASIC Superannuation (RSE Websites) Instrument 2017/570. While the ASIC instrument was exempt from sunseting under item 6 of regulation 11 of the Legislation (Exemptions and Other Matters) Regulation 2015, it is to be repealed as a consequence of the repeal of section 29QB of the SIS Act (by Schedule 6 to the Act). Consequently, this exemption has been moved to the Regulations, which will also be exempt from sunseting under item 18 of regulation 12 of the Legislation (Exemptions and Other Matters) Regulation 2015.

This exemption is consistent with Article 17 of the ICCPR as it positively protects privacy by not requiring the disclosure of personal information relating to beneficiaries and former beneficiaries of RSEs.

### **Conclusion**

This Legislative Instrument is compatible with human rights because it promotes the protection of human rights.