



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: BLC:JvdPIb280722

28 July 2022

Manager
Retirement, Advice and Investment Division
The Treasury
Langton Crescent
Parkes ACT 2600

By email: superannuation@treasury.gov.au

Dear Sir/Madam,

Superannuation Annual Members' Meeting Notices

The Law Society of NSW appreciates the opportunity to participate in the consultation on the exposure draft Superannuation Industry (Supervision) Amendment (Annual Members' Meetings Notices) Regulations 2022 (draft Regulations), which proposes changes to the disclosure requirements for superannuation annual members' meeting notices. The Law Society's Business Law Committee contributed to this submission.

Proposed amendments

The draft Explanatory Statement maintains that the draft Regulations have the benefit of "keeping compliance costs low to preserve members' money for retirement" while still maintaining disclosure of "an appropriate amount of information to members."¹

Regulatory burden is reduced through amendments that:

- remove itemised disclosure of certain expenditure;
- remove the double counting of certain expenditure; and
- align the definition of 'related party' to the definition in the Australian of 'related party' to the definition in the Australian Accounting Standards.²

Item 3 of the draft Regulations repeals paragraphs 2.10(1)(e) to (h) of the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations), which set out the itemised disclosure requirements for certain categories of expenses. These expense categories include:

- promotion, marketing and sponsorship expenses;
- political donations;

¹ Exposure Draft Explanatory Statement, Superannuation Industry (Supervision) Amendment (Annual Members' Meetings Notices) Regulations 2022, 1.

² Ibid.

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

The draft Regulations still require the disclosure of an aggregate figure for each of these four categories of expenses in the short-form summary required under paragraph 2.10(1)(a) of the SIS Regulations.

Requirement for itemised expense disclosure

In August 2021, the *Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Improving Accountability and Member Outcomes) Regulations 2021* amended the SIS Regulations by prescribing that certain information must be provided with a notice for an annual members' meeting, including the itemised expenditure that the draft Regulations, if made, will remove. The Explanatory Statement which accompanied the amending Regulation in 2021 stated that the disclosure in relation to marketing and other like expenses "will enable members to ask questions about the purpose and value of this expenditure"³, and, in relation to payments to related entities, "is to ensure members have visibility over payments made to related entities of the RSE and can ask questions about the purpose of such payments."⁴

The draft Explanatory Statement for the draft Regulations does not provide an estimate of the costs or projected costs to superannuation trustees that would arise from complying with the current regulations, which were only introduced in August 2021. The draft Regulations have been assessed as having no more than a minor regulatory impact and accordingly no Regulatory Impact Statement has been prepared.⁵ While the cost of complying with the current regulations is undoubtedly higher than under the draft Regulations, we submit that the focus should not be on cost alone. The current disclosure regime is designed to enable better informed decision-making by members.

We also submit that the protection of the commercial sensitivity of payments does not justify removing the requirement to disclose itemised expenditure. While we acknowledge that the requirement to provide the information required under paragraph 2.10(1)(e) for each particular contract for promotion/sponsorship, may be significant in terms of resources and cost, and that details of every arrangement may not be of great utility to member decision-making, we do not consider that these factors justify the repeal of 2.10(1)(e)(iii), and the wholesale removal of itemised disclosure generally.

We submit that the correct balance between reducing regulatory burden and providing accountability and transparency has not been achieved with the removal of the requirement for itemised disclosure of expenditure under subregulation 2.10. For this reason, we do not support the draft Regulations in their current form.

Definition of related party

The draft Regulations also insert a new subregulation 2.10(2A) which defines 'related party' pursuant to accounting standard AASB 124 Related Party Disclosures, instead of providing a separate definition in paragraph 2.10(1)(h). We support this amendment of the SIS Regulations, which aligns the definition of 'related party' to the definition in the Australian Accounting Standards.

³ Explanatory Statement, *Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Improving Accountability and Member Outcomes) Regulations 2021*, Attachment A.

⁴ *Ibid.*

⁵ Exposure Draft Explanatory Statement, *Superannuation Industry (Supervision) Amendment (Annual Members' Meetings Notices) Regulations 2022*, 4.

Preventing the double-counting of political donation expenditure

The draft Explanatory Statement notes that political donations and promotion/sponsorship spending can be doubled-up in aggregations and may potentially confuse members and mislead with seemingly inflated spending amounts. We support amendments that would avoid the doubling up of payments in aggregated sums. We suggest that this can be achieved by providing, in an amended version of the draft Regulations, that all payments are only required to be recorded once, as part of any aggregated payment disclosed under the regulations.

If you have any questions about this submission, please contact Liza Booth, Principal Policy Lawyer, at liza.booth@lawsociety.com.au or on (02) 9926 0202.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Joanne van der Plaats', written in a cursive style.

Joanne van der Plaats
President