



Australian Government
The Treasury



Ministerial Submission

MS22-000939

FOR ACTION - Annual members' meeting notice

TO: Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP
CC: Treasurer – The Hon Jim Chalmers MP

TIMING

A signed letter by **Friday 17 June** to progress development of regulations.

Recommendation

- That you **agree** to amend the information requirements for annual members' meeting notices. Specifically, agree to remove itemised disclosure of expenditure, provide clarity on promotion expenditure and amend the definition of related party to align with Australian accounting standards.

Agreed / Not agreed

- That you **agree** to release exposure draft regulations prior to 30 June 2022 for a two week public consultation.

Agreed / Not agreed

- Subject to your agreement to the above, that you **sign** the letter at Attachment A seeking the Prime Minister's authority to the proposed amendments.

Signed / Not signed

Signature

Date: / /2022

21/6/22

KEY POINTS

- Your office has requested advice on amendments to the disclosure requirements of annual meeting notices for superannuation funds.
- The disclosure requirements were significantly extended by the *Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Improving Accountability and Member Outcomes) Regulations 2021*, made on 5 August 2021.
- The key requirements include the disclosure of aggregated and itemised expenditure across five categories – remuneration, promotion expenditure, payments to registered organisations, political donations and related party transactions.
- Treasury supports reducing the compliance burden on registrable superannuation entity's (RSE) disclosure by removing the obligation to provide itemised disclosure, avoiding double counting and aligning the definition of related entities with the Australian accounting standards. We consider this balances transparency for members and the cost of compliance for superannuation funds.
 - Itemised disclosures are likely to be costly to report and benefit only a small portion of highly engaged members. Aggregated disclosure provides members with sufficient simple and clear information.
 - Providing further clarity in regulations will reduce the risk of superannuation funds double counting promotions expenditure where it serves more than one purpose.
- Stakeholders have also called for removing disclosure of payments to industry bodies or trade associations. Treasury recommends retaining the aggregated disclosure of these payments, in line with the other forms of expenditure, so that members are well informed ahead of the meeting. Aggregated disclosure protects the commercial sensitivity of payments.
- Some stakeholders may be concerned the amendments reduce transparency for members. Importantly, members will still retain the opportunity to ask specific questions in the course of the annual members' meeting, maintaining trustee accountability.
- Aligning the definition of related entities with the Australian accounting standards may lead to notable instances in which payments made by RSEs to certain entities are no longer captured. E.g. where funds are not associated with (do not have significant influence over) the entity; and key management personnel are not shared between the fund and the entity.

Implementation

- Meeting notices for most super funds are required to be sent to members between 1 July 2022 and 31 December 2022. In practice the earliest we expect meeting notices to be sent is August, for meetings to be held in November. This is based on timings from the 2021 round of annual members' meetings.

- Immediate action is required if you are inclined to make amendments that take effect prior to the upcoming round of meeting notices being issued.
- Changes can be implemented via amending the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations). It is not possible to amend the regulations prior to 30 June 2022. To amend regulations you traditionally require policy authority from the Prime Minister, drafting resources (from the Office of Parliamentary Counsel), a consultation process on the draft regulation and then a final Ministerial approval process.
 - Even truncated time frames for each step of the process would not enable the documents to be finalised in time for the Executive Council meeting on 23 June 2022.
- Treasury suggest releasing an exposure draft for public consultation as soon as possible but prior to 30 June 2022, with an aim to finalise the regulations at an Executive Council meeting as soon as practical thereafter.
 - Releasing the exposure draft with an accompanying media release before 30 June will signal to industry that the regulations are subject to change, funds may then choose to defer the release of meeting notices until any amendments become law.
 - Treasury understands there are a small number of funds (10) who may issue meeting notices before August due to an amended tax year, and therefore will need to comply with the current regulations. Treasury understands these funds are primarily smaller, non-public offer funds.
- Treasury would prefer to consult on an exposure draft for a minimum of four weeks. However, the longest possible consultation period to still meet an August Executive Council meeting is two weeks. Stakeholders are likely to raise concerns regarding this short consultation process.
- A draft letter seeking policy authority from the Prime Minister for signature is included at **Attachment A**.
- The Office of Best Practice Regulation has confirmed that a Regulation Impact Statement (RIS) is not required.

Clearance Officer

Luke Spear
Assistant Secretary
Retirement, Advice and Investment Division
Member Outcomes and Governance Branch
10 June 2022

Contact Officer

s 22
Acting Director
Ph: s 22 Mob: s 22

CONSULTATION

Law Division, Department of the Prime Minister and Cabinet, Australian Securities and Investments Commission, Office of Best Practice Regulation

ATTACHMENTS

Additional Information: Current regulations and proposed amendments

A: Policy Authority letter

ADDITIONAL INFORMATION – CURRENT REGULATIONS AND PROPOSED AMENDMENTS

Section 29P of the *Superannuation Industry (Supervision) 1993 Act* (SIS Act) requires that the registerable superannuation entity (RSE) licensee of a RSE hold an annual meeting of members for each year and required a notice of the meeting be provided to all members of the RSE. The current and proposed contents of the notice of meeting is summarised below:

Current Regulations	Proposed Regulations
<i>Short Form Summary</i>	<i>Short Form Summary</i>
Aggregate remuneration of executive officers	Aggregate remuneration of executive officers
Aggregate promotion spend	Aggregate promotion spend (unless counted as a political donation)
Aggregate political donations	Aggregate political donations
Aggregate payments to industrial bodies	Aggregate payments to industrial bodies
Aggregate related party payments (as defined in the SIS Regulations)	Aggregate related party payments (as defined by Australian accounting standards)
<i>Additional Information (can be via link)</i>	
Summary of significant event notices in preceding 2 years	Summary of significant event notices in preceding 2 years
Remuneration details as required to be published on the website under 29QB of the SIS Act	Remuneration details as required to be published on the website under 29QB of the SIS Act
Annual report (if the fund produces one)	Annual report (if the fund produces one)
Annual outcomes assessment (as per section 52(9)(a) of the SIS Act)	Annual outcomes assessment (as per section 52(9)(a) of the SIS Act)
Periodic statement for the member	Periodic statement for the member
Itemised disclosure of marketing and promotion contracts	Remove
Itemised disclosure of political donations	Remove
Itemised disclosure of payments made to industrial bodies (organisation as defined by the <i>Fair Work Registered Organisations Act 2009</i>)	Remove
Itemised list of related party transactions	Remove

ATTACHMENT A – POLICY AUTHORITY LETTER



THE HON STEPHEN JONES MP
ASSISTANT TREASURER AND MINISTER FOR FINANCIAL SERVICES

Ref: MS22-000939

The Hon Anthony Albanese MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

I seek your urgent agreement to a proposal to amend the information superannuation funds are required to provide to their members, ahead of required annual members' meetings. The next round of meeting notices are expected to be sent to members from August 2022, as the annual members' meetings must occur within six months of the end of the fund's financial year and notice given no less than 21 days prior to the meeting.

The *Superannuation Industry (Supervision) Regulations 1994* currently prescribe that superannuation funds are required to provide members with additional information relating to expenditure with the meeting notice. This includes a short form summary outlining aggregated and itemised expenditure across five categories – remuneration, promotion expenditure, payments to registered organisations, political donations and related party transactions.

My proposed approach is to amend the regulations to remove itemised disclosure of expenditure and clarify the classification of promotion expenditure and to align the definition of 'related party' with that used in current accounting standards. This approach maintains a high level of transparency for members, while reducing the compliance cost for superannuation funds, in line with feedback from stakeholders. This ensures that the information provided to members ahead of the meeting is simple and clear to help promote member engagement. The proposal has no financial impact, and the compliance cost is expected to be low.

It is possible these amendments may be seen as reducing transparency for members, however detailed disclosures as currently required by the regulations benefit only a small number of highly engaged members with the costs borne by all. I note members remain empowered to ask questions of their trustees at the members' meeting. To address this risk, I propose a two-week public consultation on the amendments.

I request your urgent response to allow the draft regulations to be developed ahead of the upcoming meeting season commencing July 2022. Subject to your approval, the regulations will be finalised at an Executive Council meeting as soon as practical thereafter.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Stephen Jones', written over a white background.

The Hon Stephen Jones MP

CC: Treasurer – The Hon Jim Chalmers MP



Australian Government
The Treasury



Ministerial Submission
MS22-001598

FOR ACTION - Annual Members' Meeting Notices - Outcomes of Consultation

TO: Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP
CC: Treasurer - The Hon Jim Chalmers MP

TIMING

URGENT by COB Thursday 4 August to progress at the earliest possible Executive Council Meeting.

Recommendation

- That you agree to the proposed policy positions on the issues raised in the consultation on draft regulations outlining changes to the disclosure requirements for superannuation Annual Members' Meeting (AMM) notices (see **Attachment B**)

Agree to Option 1 but foreshadow addressing Option 2 issue subsequently

Agreed / Not Agreed

- That you note, consistent with standard practice, Treasury will publish all non-confidential submissions received for the AMM regulations consultation after the regulations have been considered by the Federal Executive Council.

Noted / Please Discuss

Signature

Date: / /2022

3/8/22

KEY POINTS

- The Government released exposure draft regulations and an explanatory statement outlining changes to the disclosure requirements for superannuation Annual Members' Meeting (AMM) notices from 15 July 2022 to 28 July 2022 (MS22-001361 refers).
- Treasury recommends updating the explanatory statement to clarify the policy intent of this disclosure is to highlight different categories of expenditure which members may be interested in discussing with trustees at the AMM. To address the comments raised by stakeholders regarding double-counting of expenditure, Treasury recommends removing the restriction on providing additional information in the short-form summary. More detail is at Attachment A.
- The Department of the Prime Minister and Cabinet have confirmed this change is within the scope of the existing Policy Authority (MC22-047194 refers).
- A summary of the key issues and Treasury's recommended approach are at **Attachment B** for your consideration and decision.
- Treasury received 10 written submissions on the exposure draft regulations (see **Attachment C**). None of the submissions are confidential.
 - The proposed amendments received support from the Australian Institute of Superannuation Trustees (AIST), the Financial Services Council (FSC), Industry Super Australia (ISA), the Association of Superannuation Funds of Australia (ASFA) and law firm Mills Oakley.
 - The Law Society of NSW and CPA Australia and Chartered Accountants Australia & New Zealand and Chartered Accountants Australia and New Zealand (CPA and CA ANZ) support some elements of the changes.
 - Senator Andrew Bragg and Stuart Robert MP do not support the proposed changes.
 - Super Consumers Australia (SCA) call for disclosure to focus on measurable benefits to members.
- Following your consideration of the stakeholder feedback, the next step is for Treasury to finalise the regulations with the Office of Parliamentary Counsel. Treasury will then provide a ministerial submission seeking your approval of the final text to enable lodgement of the documents at the earliest possible Executive Council meeting.
- The timeframes are condensed in order for the regulations to be made at the meeting of the Executive Council on 1 September 2022. If the deadlines are not met, we would aim to have the regulations made at the following Executive Council meeting on 15 September, noting that superannuation funds may delay their AMM to comply with the amended regulations.
- Treasury will provide your office with a set of talking points with regard to the final regulations before they are made.

Clearance Officer
Katarina Trinh
Acting Director
Retirement, Advice and Investment Division
2 August 2022

Contact Officer
s 22
Assistant Director
Ph: s 22

CONSULTATION

Law Division, APRA, ASIC and PM&C

ATTACHMENTS

- A: Options for Double-Counting Issue
- B: Issues raised in consultation
- C: Stakeholder submissions

ATTACHMENT A – OPTIONS FOR DOUBLE-COUNTING ISSUE

- A number of stakeholders highlighted multiple categories of expenditure which could be double-counted (in addition to political donations) and call for further amendments to eliminate double-counting across all categories.
 - For example, AIST highlights that marketing expenses may be paid to an industrial body, and the industrial body may also be counted as a related party.
- The current and draft regulations outline different categories of aggregate expenditure which are differentiated either by the purpose of the payment, the recipient of the payment or both. The following table summarises the requirements:

Expense Category	Payment purpose	Recipient
<i>Promotion, marketing or sponsorship expenditure</i>	Specific purpose	All recipients
<i>Political donations</i>	Specific purpose	Specific recipients
<i>Industrial body payments</i>	All purposes	Specific recipients
<i>Related party payments</i>	All purposes	Specific recipients

- The justification for removing double counting of political donations in the draft regulations was to provide clarity where this type of payment would meet both the purpose outlined in the promotion, marketing or sponsorship expenditure definition, as well as the definition of gift within the meaning of Part XX of the Commonwealth Electoral Act 1918 (CEA).
- We have outlined a number of potential options to address the issue of double-counting raised by stakeholders.

Option 1 (Treasury Preferred) – Update the Explanatory Statement and remove the restrictions on including additional information in the short-form summary.

- This option would retain the clarification outlined in the current version of the draft regulations – that where the purpose of the payment meets the definition of ‘promotion, marketing or sponsorship’ expenditure, and also meets the definition of ‘political donations’, the expenditure be disclosed in the political donations category.
- The purpose of this technical change was to provide clarification where the payment disclosure is based on the type of payment, regardless of recipient.
- This does not affect the inclusion of this expenditure in the appropriate category of industrial body payments and related party payments based on the recipient.
- It is not intended that the expenses reported with the AMM notice are an exhaustive list. The categories of expenditure should be considered separately and not be added together (as payments can be counted in more than one category). The policy intent for this disclosure is to highlight different categories of expenditure which members may be interested in raising with trustees at the AMM. Treasury recommends providing further clarification to this effect in the explanatory statement.

- To address the issue of double-counting based on recipient, Treasury recommends removing the current restrictions on including additional information in the short-form summary.
 - Regulation 2.10(1)(a)(i) of the Superannuation Industry (Supervision) Regulations 1994 prevents the inclusion of any additional information on the same page as the disclosure of the aggregate expenditure categories.
- Removing this restriction would allow superannuation funds to provide context to the aggregate figures assisting to improve members' understanding of the disclosure. Under the proposed change, the short-form summary would still be required to fit on a single page.

Option 2 - Amend the requirements to remove double-counting for all expenses by introducing additional subcategories.

- Under this option, all payments would be first categorised by the payment type with additional subcategories based on the recipient.
- Disclosure is focused on the type of the payment, while still providing full transparency for payments made to industrial bodies and related parties. It would remove all double-counting and directly addresses concerns raised by stakeholders. For example, a payment made for marketing services to an industrial body who is also a related party, will only be disclosed once.
- This option would require additional policy approval from the Prime Minister and the changes would likely involve a substantive rewrite of the regulations. Changes of this nature could not be implemented ahead of the upcoming round of AMM's in the second half of 2022 but could be reconsidered in the future.

Option 3 – Remove double counting of payments across all categories

No

- This option would also ensure that all disclosable payments are only captured once.
- Under this option, funds would identify all expenses that are required to be disclosed either by identifying the purpose of the payment or the recipient of the payment. Where the payment could fit into multiple categories of expenditure, funds would only be required to report the payment in one category. This creates a risk of gaming if funds have discretion to allocate payments to specific categories.
- This risk could be mitigated by establishing specific rules around the hierarchy for categorising payments. Treasury does not recommend this approach as the establishment of the hierarchy rules require value judgements to be placed on which types of payments are considered more important than others.

Option 4 – Remove draft changes and retain existing regulations which allow double counting across all categories of expenditure

- This option would involve no change to the current disclosure of promotion, marketing or sponsorship expenditure or political donations. There remains a risk that expenses that meet both payment definitions would be double-counted.
- Treasury does not recommend this option as it does not seek to address suggestions by stakeholders that would improve the effectiveness of the disclosures.

ATTACHMENT B – ISSUES RAISED IN CONSULTATION

Issue	Comments from Stakeholders	Treasury Recommendation
<p>Double-counting of Expenses</p> <p>(AIST, Law Society of NSW, CPA and CA ANZ, ISA)</p>	<p>A number of stakeholders highlighted multiple categories of expenditure which could be double-counted and call for further amendments to eliminate double-counting across all categories.</p> <p>For example AIST highlights that marketing expenses may be paid to an industrial body, and the industrial body may also be counted as a related party.</p> <p>CPA and CA ANZ caution that double-counting should be eliminated with care to ensure the changes don't lead to reduced disclosure.</p> <p>ISA suggest that future regulations could include amendments which require funds to clarify where expenses are overlapping.</p>	<p>Treasury recommends Option 1. See Attachment A for details.</p> <p>Option 1 (Treasury Preferred) – Update the Explanatory Statement and remove the restrictions on including additional information in the short-form summary.</p> <p>Option 2 - Amend the requirements to remove double-counting for all expenses by introducing additional subcategories.</p> <p>Option 3 – Remove double-counting of payments across all categories.</p> <p>Option 4 – Remove draft changes and retain existing regulations which allow double counting across all categories of expenditure.</p> <p>Option 1 / Option 2 / Option 3 / Option 4 / To Discuss</p>
<p>Changes to the Short-form Summary</p> <p>(AIST)</p>	<p>AIST requested further changes to the short-form summary to allow for the inclusion of additional contextual information accompanying the aggregate figures, and improve the technology neutrality of the requirements.</p>	<p>If Option 1 above is agreed, Treasury recommends removing the restriction on providing additional information in the short-form summary.</p> <p>Providing that the short-form summary remains limited to one page, additional contextual</p>

Issue	Comments from Stakeholders	Treasury Recommendation
		<p>information would assist members' understanding.</p> <p>Technologically neutral considerations for superannuation are broader than this regulation alone and should not be considered for AMM notices in isolation.</p> <p>Agreed / Not Agreed</p>
<p>Removing Itemised Disclosure</p> <p>(AIST, Mills Oakley, ASFA, Law Society of NSW, Senator Bragg)</p>	<p>Mixed views from stakeholders. AIST and Mills Oakley were supportive of reduced compliance costs.</p> <p>ASFA support the removal of itemised disclosure as they believe "the level of intricate detail in the disclosures arising from the existing requirements could be overwhelming to members".</p> <p>Law Society of NSW and Senator Andrew Bragg expressed concerns that the changes significantly reduce transparency and the focus should not be on cost alone.</p>	<p>Treasury recommends no change.</p> <p>The proposed amendments are expected to reduce compliance costs associated with publishing detailed information in a readable format and would be less overwhelming to members.</p> <p>Agreed / Not Agreed</p>
<p>Aligning the related party definition with the Australian Accounting Standards</p> <p>(Senator Bragg, ISA, Mills Oakley, Law Society of NSW, CPA and CA ANZ, ASFA)</p>	<p>Broad support.</p> <p>Senator Andrew Bragg expressed concerns that the narrower definition of related party may create gaps which could enable funds to circumvent disclosures for payments to political parties or industrial bodies.</p> <p>ISA call for more detailed consideration to take into account the complexity and diversity of commercial arrangements.</p>	<p>Treasury recommends no change.</p> <p>Stakeholders acknowledged there are benefits to adopting a definition where there is industry-wide recognition. It also ensures figures are consistent with financial statements (which many funds voluntarily publish).</p> <p>Agreed / Not Agreed</p>

Issue	Comments from Stakeholders	Treasury Recommendation
<p>Technical clarity of definitions</p> <p>(AIST, ASFA, FSC)</p>	<p>AIST, ASFA and the FSC have requested further clarification regarding what constitutes a marketing contract.</p> <p>AIST and ASFA have also requested further clarity for disclosure of accrued liabilities, by replacing the reference to 'payments' with the word 'expense' to align with accounting standards.</p> <p><i>I agree subject to any issues that this may give rise to.</i></p>	<p>Treasury recommends no change.</p> <p>No changes were proposed to the definitions of contracts or payments in the draft regulations. The regulations specify that the disclosure is to cover payments made in the financial year of income to which the notice relates.</p> <p>While further clarity was raised by FSC they did not identify any implementation issues.</p> <p>We will consider further whether additional clarification in the Explanatory Statement is required.</p> <p>Agreed / Not Agreed</p>
<p>Alignment with APRA reporting</p> <p>(FSC, CPA and CA ANZ, ISA, ASFA)</p>	<p>FSC, ISA, ASFA and CPA and CA ANZ recommend that the figures in AMM disclosures match those disclosed for the purposes of APRA data collection and publication.</p>	<p>Treasury recommends no change.</p> <p>APRA currently applies the bespoke definition of related party in the regulations for their data collection.</p> <p>APRA will be consulting with industry in September 2022 for minor amendments to their reporting definitions and it is APRA's intention to align the definitions with the updated regulations.</p> <p>Agreed / Not Agreed</p>

Issue	Comments from Stakeholders	Treasury Recommendation
<p>Disclosure of Aggregate Dividend Payments/Profits</p> <p>(ISA, SCA)</p>	<p>ISA and SCA called for the disclosure of aggregate dividend payments made by funds to shareholders.</p> <p>SCA noted that evidence provided to a Parliamentary Committee demonstrates that profit is a “significant and distinguishable category of expenditure”.</p> <p style="text-align: center; color: blue; font-family: cursive;">Discuss</p>	<p>Treasury recommends no change.</p> <p>Dividend payments are not currently reported to APRA at the fund level as they are paid from the trustee company to a parent company, and are separate to expenses incurred by or on behalf of the fund.</p> <p>Members retain the right to ask about dividend payments or other related party transfers in the AMM.</p> <p>Agreed / Not Agreed</p>
<p>Requirement to justify expenditure</p> <p>(SCA)</p>	<p>SCA call for obligations to justify expenditure. They further suggest that APRA collect this information in a central report to allow relevant comparisons between funds according to their size, level of expenditure and member benefits.</p>	<p>Treasury recommends no change.</p> <p>Trustees must act in the best financial interests of members.</p> <p>Agreed / Not Agreed</p>
<p>Timing of proposed changes</p> <p>(AIST, Senator Bragg)</p>	<p>AIST called for the changes to be implemented at the soonest opportunity to provide certainty to industry.</p> <p>Senator Andrew Bragg recommends that no changes should commence until July 2023 to evaluate the disclosures made under the current regulations.</p>	<p>Treasury recommends no change.</p> <p>Industry is broadly supportive of the draft regulations and we do not consider it beneficial to delay the reduction in regulatory burden.</p> <p>Agreed / Not Agreed</p>

AIST

26 July 2022

Retirement, Advice and Investment Division
Treasury
Langton Cres
Parkes ACT 2600

Email: superannuation@treasury.gov.au

Superannuation Annual Members' Meeting Notices

Brief

- AIST endorses the proposed amendments. Funds are currently operating under a dual regulatory regime while preparing their financial reports for the 2021/22 financial year. This is unnecessarily onerous and requires resolution at the soonest opportunity to provide certainty and limit costs of preparing statements under both regimes.
- AIST proposes further technical refinements that will give clarity to funds in interpreting the requirements.

About AIST

Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public sector superannuation funds.

As the principal advocate and peak representative body for the \$1.8 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST advocates for financial wellbeing in retirement for all Australians regardless of gender, culture, education, or socio-economic background. Through leadership and excellence, AIST supports profit-to-member funds to achieve member-first outcomes and fairness across the retirement system.

AIST welcomes the opportunity to provide feedback to the proposed changes.

AIST supports transparency measures and believes disclosure of expenses in aggregated categories provides accountability and transparency and will achieve a better level of member engagement and understanding than line by line disclosure of individual expenditure.

This aggregate approach is consistent with the disclosure of portfolio holdings, providing members with adequate, useful and not overwhelming information about their interests in the fund while still having regard to their best financial interests in limiting compliance costs. It further protects commercially sensitive contract information that may impact negotiating positions and lead to upward pressure on costs from vendors benefitting from granular disclosures.

We propose the following future refinements to the regulations:

- Align definition of payment with Accounting Standards
- Contextual information be allowed in the short-form summary
- Definition of Contract within Marketing expenditure
- Remove double-counting of expenditure that meets more than one definition

1. Definition of a payment

The terminology would benefit by replacing reference to ‘payments’ with ‘expenses’ to provide clarity around accrued liabilities that have not yet been paid, in accordance with the standards of the AASB. This will improve consistency across disclosures.

For example:

2(b) the sum (to be described as the aggregate promotion, marketing or sponsorship expenditure relating to the entity for the year of income) of the amounts of all **the expenses** that satisfy all of the following:

- (i) the **expense relates to a payment has been made, or is to be made**, by or on behalf of the entity under a contract during the year of income;
- (ii) the purpose of the payment is promoting the entity, promoting a particular view on behalf of the entity or sponsorship on behalf of the entity;
- (iii) the payment is not a gift (within the meaning of Part XX of the Commonwealth Electoral Act 1918) whose amount or value is to be included in the sum referred to in paragraph (c) of this subregulation;

2(c)....etc

and then INSERT:

For the purposes of paragraph (2)(b), 29(c)etc, 'expenses' are recognised and measured in accordance with Pronouncements issued by the Australian Accounting Standards Board.

Page | 3

Recommendation - Replace reference to 'payments' with 'expenses' to provide clarity around accrued liabilities that have not yet been paid, in accordance with the standards of the AASB.

2. Contextual information in the short-form summary

The current regulations state that the short-form summary of expenditure must:

- (i) fit on a single page and be the only information on that page; and
- (ii) be the first page of the pages of information referred to in this regulation;

This first point precludes funds from articulating that certain expenditure may fall within multiple categories or from providing any other relevant descriptive information that gives context to the dollar amount and will aid members' understanding of the expense.

This requirement is also not technologically neutral, preventing funds from developing innovative digital solutions to provide notice that are not limited to hard copy or digital PDF formats that represent the concept of a 'single page'.

Recommendation - We propose that appropriate contextual information be allowed on the short-form summary and consideration be given to technologically neutral requirements.

3. Definition of Contract within Marketing expenditure

The definition, in the amending regulation, of promotion, marketing or sponsorship expenditure currently includes that:

- (i) the payment has been made, or is to be made, by or on behalf of the entity under a contract during the year of income;

The reference to a contract is unclear in this setting. While significant sponsorship and marketing arrangements are provided subject to ongoing contract terms and purchase arrangements, incidental expenditure that qualifies as marketing and promotional expenditure is often simply invoiced. Examples include a short print run of product disclosure statements to distribute at the Annual Member Meeting, a one-off advertising placement in a publication or sponsored posts on social media sites.

Recommendation - Greater clarity on what constitutes a contract would be beneficial to ensure consistency of reporting.

4. Duplication of expenditure within categories

Clarity is required on the categorisation of payments. In its current form, the regulations pinpoint expenditure in terms of 'type' of payment (i.e. marketing and sponsorship or political donations) or 'recipient' of payment (i.e. related party or industry association). This leaves it open for certain payments to fall within multiple categories and leads to double counting.

Page | 4

While we welcome the intent of the new draft to quarantine marketing expenditure from the payment of political gifts or donations, this does not address that marketing expenditure may be made to industry bodies or other related parties, and that an industry body may qualify as a related entity. As can already be deduced from the AEC Transparency Register, funds do not make gifts or donations to political parties so this amendment does little to improve transparency in the profit-to-member superannuation sector.

We note that much of the required aggregated information is already disclosed within the audited financial statements published on fund websites, with supporting contextual information, in accordance with the Related Party disclosure standards of the Australian Accounting Standards Board (AASB).

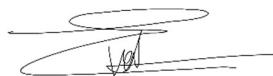
Expenditure disclosed in these reports includes payments to

- industry bodies for directors' fees, marketing and sponsorship activities,
- investment managers, asset consultants and other service providers in which funds have a financial stake or shareholding, and
- controlled entities established as investment vehicles.

Recommendation - To avoid double counting, it would be preferable that amounts paid for marketing or sponsorship that also meet the definition one of the other categories, are only included in one category, e.g. marketing and sponsorship.

For further information regarding our submission, please contact Kate Brown, Senior Manager, Research and Advocacy at kbrown@aist.asn.au.

Yours sincerely,



Eva Scheerlinck

Chief Executive Officer



Senator Andrew Bragg
Liberal Senator for New South Wales

28 July 2022

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

By Email: superannuation@treasury.gov.au

To whom it may concern

I present the enclosed submission to the Treasury Consultation on the Superannuation Annual Members' Meeting Notices Exposure Draft.

I take this unusual step of providing a submission as a sitting Senator because of the scale of vandalism proposed in these reforms.

The reforms have barely commenced and therefore cannot be properly reviewed or given an opportunity to stamp out bad behaviour.

Yours sincerely

A handwritten signature in black ink, consisting of stylized initials 'AB'.

Senator Andrew Bragg
Liberal Senator for New South Wales

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Parliament Office

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The Landscape

The Australian superannuation sector is this country's most privileged industry.

Each year, superannuation funds charge approximately \$30 billion in fees. Australians entrust superannuation funds with the management of 10.5 per cent of their hard-earned wages. Cumulatively, the industry manages well over \$3 trillion of the retirement savings of Australian workers.

As a compulsory system, the Australian government has a special responsibility to hold superannuation funds to account, by putting the appropriate regulatory framework in place to guarantee that funds are working for members.

The least the government can do is ensure that members know where their compulsorily acquired wages are going.

For the majority of Australians, their superannuation will become their largest asset in retirement. Decisions around how members' money is managed and where it is spent should be deeply personal.

Members must have access to complete information about their fund's expenditure in order to make a fully informed assessment of their fund's performance.

Superannuation funds must operate under the highest standards of accountability and transparency.

Your Future, Your Super

During the 46th Parliament, the Liberal Government passed the *Your Future, Your Super* reform package. These reforms were directly informed by the Productivity Commission Inquiry into superannuation efficiency and competitiveness.

The Commission found that consistently underperforming superannuation funds were a central flaw of the system. The Commission also found significant evidence of trustees acting in ways that were inconsistent with the best interests of members.

That is why the Liberal reforms targeted underperformance and strengthened protections for members in the superannuation system.

According to the Treasury, *Your Future, Your Super* was set to save Australian workers \$17.9 billion over 10 years.

Your Future, Your Super achieved the following outcomes:

- It imposed a best financial interests duty on superannuation funds, with the burden of proof sitting with the fund to demonstrate how every expenditure would achieve positive financial outcomes for members.
- It required APRA to undertake annual performance tests of superannuation funds. A fund failing the test for two consecutive years would be disqualified from accepting new members.

- It established the online YourSuper Comparison Tool: An accessible platform for consumers to compare superannuation products and analyse their fund's performance.
- It required funds to hold Annual Members' Meetings. Before these meetings, members would be provided with a record of marketing and sponsorship expenses, political donations and union payments.

The Proposed Regulations

At 5.30pm on a Friday evening, Assistant Treasurer and Minister for Financial Services, Stephen Jones MP, put forward the Labor Government priority in superannuation reform: the *Superannuation Industry (Supervision) Amendment (Annual Members' Meetings Notices) Regulations 2022* ('the proposed Regulations').

The proposed Regulations represent an erosion of the Annual Members' Meetings, and the disclosure members were guaranteed under the *Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Improving Accountability and Member Outcomes) Regulations 2021* ('the YFYS—Improving Accountability and Member Outcomes Regulations').

The YFYS—Improving Accountability and Member Outcomes Regulations represented one of the most significant pieces of reform in the YFYS package.

The YFYS—Improving Accountability and Member Outcomes Regulations introduced Annual Members' Meetings, a mechanism for members to scrutinise their fund's financial management and ask questions of their trustees.

To ensure members are fully equipped to participate in the Meetings, the YFYS—Improving Accountability and Member Outcomes Regulations required funds to distribute an itemised table of expenditure across the following areas:

1. All promotion, marketing or sponsorship costs.
2. All political donations.
3. All payments to industrial bodies.
4. All payments made to related parties, which are defined as the following:
 - a. Connected entities,
 - b. Third party connected entities,
 - c. Entities with significant influence over the fund, or
 - d. Entities with whom the fund shares key management personnel.

The Labor Government's proposed Regulations would remove the requirement for a fund to provide an itemised record of expenditure (see figure 1).

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.

Items 3 and 4 – Repealing the itemised disclosure of expenses requirements

Item 3 repeals paragraphs 2.10(1)(e) to (h) of the Principal Regulations, which set out the itemised disclosure requirements for certain categories of expenses. These expense categories include:

- promotion, marketing and sponsorship expenses;

3 of 6

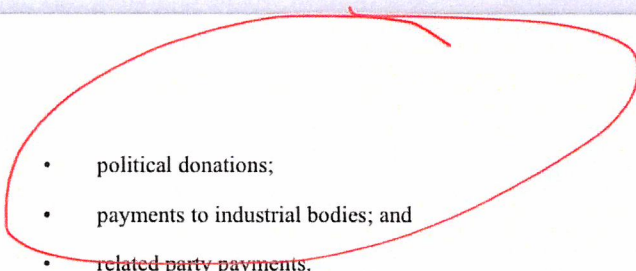
- 
- political donations;
 - payments to industrial bodies; and
 - ~~related party payments.~~

Figure 1: Explanatory Statement, *Superannuation Industry (Supervision) Amendment (Annual Members' Meetings Notices) Regulations 2022*, pages 3-4.

A superannuation fund would merely be required to offer its members an aggregated sum of spending across the four categories.

Under the *YFYS—Improving Accountability and Member Outcomes Regulations* introduced by the Coalition government, an Annual Members' Meeting has to happen within nine months after the end of the financial year. As many superannuation funds have a 30 June financial year, this means none of the required disclosures have been made by the funds, as they traditionally hold their Annual Members' Meetings in November and December.

Should the proposed Regulations be adopted, superannuation members will once again be left in the dark and be presented less information for no apparent reason or plausible justification.

Related Party Disclosure

A great strength of the *YFYS—Improving Accountability and Member Outcomes Regulations* is that it adopted a broader definition of related parties, by going beyond the Australian Accounting Standards Board Standard 124, *Related Party Disclosures*.

The definition in *YFYS* captures bodies funded by superannuation money that would not be classified as related parties under the current definition in the *Corporations Act 2001* (Cth) or Standard 124. Unless disclosure is required, members will remain unaware as to whether entities which are effectively controlled by a superannuation fund are making donations or other related party transactions.

For example, AustralianSuper has an investment in Industry Super Holdings Pty Ltd, and association with The New Daily Pty Ltd (see figure 2). The New Daily is a propaganda outfit of the superannuation funds, used to attack political opponents and critics of superannuation. Under the proposed Regulations, superannuation funds may hide their investment in related parties, like The New Daily, from members through aggregated sums.

The Explanatory Statement does not explain the impact of the change on disclosure, but it is well understood that by moving to a narrow accounting definition entities will be excluded, and hence gaps will be introduced into the framework.

These gaps will become the vehicle by which payments, such as political and union donations, are made, as disclosures will not be required for these entities.

Having not yet seen the disclosures in practice, the Government will be changing this definition without knowing what transactions they will be excluding.

(c) Related party investments and transactions

Details of the Fund's related party investments and transactions are listed below.

(i) *Industry Super Holdings Pty Ltd (ISH)*

The Fund held a 19.95% (2020: 19.95%) shareholding in ISH valued at \$242,489,000 (2020: \$197,939,000). ISH has a number of subsidiary companies, one of which manages investments on behalf of the Fund; IFM Investors Pty Ltd (IFM) manages a selection of infrastructure, Australian listed equities, private equity, fixed interest and cash portfolios on behalf of the Fund.

IFM managed portfolios totalling \$49,182,018,000 (2020: \$52,570,977,000) on behalf of the Fund and received \$60,333,000 (2020: \$64,974,000) in fees for the management of these portfolios. These fees included fees paid to underlying investment managers for various portfolios and management fees paid directly to IFM of \$40,456,000 (2020: \$39,288,000). The income earned on the portfolios managed by IFM was \$3,308,063,000 (2020: (\$2,823,892,000)).

ISH has various other subsidiaries with which the Fund transacts. These non-investment transactions are summarised in the following table.

Company	Nature of transaction	2021 \$	2020 \$
Industry Funds Services Limited	Financial planning, arrears collection and other member services	1,766,000	2,203,000
Industry Super Australia Pty Ltd	Marketing services	5,070,000	5,070,000
IFS Insurance Solutions Pty Ltd	Insurance services	270,000	245,000

P Burn and I Silk are directors of Industry Super Australia Pty Ltd which is a subsidiary of ISH.

B Crofts and G Thompson were Directors of The New Daily Pty Ltd, a wholly owned subsidiary of ISH. During the year ended 30 June 2021, the Trustee paid B Crofts \$24,000 (2020: \$5,300) for being AustralianSuper's nominee on the Board of The New Daily. Subsequent to 30 June 2021, The New Daily Pty Ltd reimbursed the Trustee \$184,000 (excl GST), being the amounts paid, plus an interest adjustment, by the Trustee to its nominee directors on the Board of The New Daily since 2013.

Figure 2: AustralianSuper, Annual Financial Report, 30 June 2021, page 33.

Recommendation

The proposed Regulations should not be pursued until such time as a full year's worth of disclosures have been made by the superannuation funds.

The financial year 2021-22 is the first year the Annual Members' Meeting disclosures will be in operation. No review or change should commence until July 2023, after there has been a proper opportunity to evaluate the disclosures that have been made.

Concluding Remarks

The Labor Government's proposed Regulations seek to deny members the right to access full information about their superannuation fund's operations.

Australian workers are entitled to know how their retirement funds are being spent.

Mr Jones has attempted to justify the proposed Regulations in his Explanatory Statement, claiming that they will reduce the regulatory burden on superannuation funds.

Gathering individualised statements of gifts and payments is merely an exercise of good book-keeping and sound financial management.

Moreover, the funds will need to gather these individualised statements in order to provide an aggregate. This data exists, so why is the Labor Government opposed to letting members see precisely where *their* wages are going?

The Labor Government is opposed to superannuation fund disclosure because the funds are quickly becoming the biggest political donors in the country. Over the past four years, the superannuation funds have paid \$40 million to Labor Party-affiliated unions.

One would be hard pressed to find a policy which so shamelessly allows political and private interests to benefit at the expense of Australian workers.

The Labor Party has proved once again that it will always put vested interests ahead of the interests of Australian workers.

28 July 2022

Retirement, Advice and Investment Division
Treasury
Langton Cres
PARKES ACT 2600

Via email: superannuation@treasury.gov.au

Dear Sir/Madam

Consultation: Superannuation Annual Members' Meeting Notices – Exposure Draft Regulations (“Exposure Draft”)

CPA Australia and Chartered Accountants Australia and New Zealand (CA ANZ) welcome the opportunity to provide comments on the above consultation.

CA ANZ and CPA Australia represent over 300,000 professional accountants globally. Our members work in diverse roles across public practice, commerce, industry, government and academia throughout Australia and internationally.

The Exposure Draft Explanatory Statement states that the purpose of these proposed rules is to keep “compliance costs low to preserve members’ money for retirement” by making the three following amendments to the required information to be supplied to members on the notice issued for annual member meetings:

- remove itemised disclosure of certain expenditure
- remove the double counting of certain expenditure
- align the definition of ‘related party’ to the definition in the Australian Accounting Standards.

CPA Australia and CA ANZ agree that the proposed amendments, if implemented, could in theory lead to lower administration costs. However, we do not believe that these amendments, when taken on their own, will necessarily lead to noticeably or materially lower fund operating costs and therefore higher member account balances.

Remove itemised disclosure of certain expenditure

We note that Australian Prudential Regulation Authority (APRA) *Reporting Standard SRS 332.0 Expenses*¹ (SRS 332.0) requires funds to report to APRA all payments to related parties. The RSE licensee cannot apply a materiality threshold to any expenses with service providers, including payments to a “related party”. Further, RSE licensees cannot apply a materiality threshold to a payment to a “related party” which involves marketing expenses, sponsorships and payments or donations to a range of organisations such as political parties. All payments described above to related parties must be reported to APRA.

¹ <https://www.legislation.gov.au/Details/F2021L01287>

The term “related party” in SRS 332.0 follows the definition of that term found in the *Superannuation Industry (Supervision) Act 1993* (“SIS Act”).

The SIS Act definition of related party contains the concept of a “connected entity”. SRS 332.0 requires RSEs to report items on a look through basis to the first entity that is not a related connected entity.

This SIS Act definition of related party is broader than that which is used in Australian Accounting Standard *AASB 124 Related Party Transactions* (AASB 124). See our comments below in regard to this proposal.

APRA has announced plans to publish all non-confidential data it receives from RSE licensees, including data provided under SRS 332.0. We welcome this announcement and believe it will help all RSE licensees to improve the operation of their superannuation funds.

It seems appropriate to us that the same information should be disclosed to superannuation fund members as that disclosed to the prudential regulator. Given that the prudential regulator publishes this information in a manner many members may not be able to readily access then it should be provided in published reports to help members understand their fund and prepare for their fund’s annual member meeting.

Remove the double counting of certain expenditure

We understand that in some cases this can occur under the current drafting of the regulations. We agree this should be eliminated but must be done with care to ensure that any change does not lead to reduced disclosure to members.

Align the definition of ‘related party’ to the definition in the Australian Accounting Standards

We agree with this recommendation with one caveat: as noted above, the definition of related party in the SIS Act is broader than that found in AASB 124. We believe that for the sake of simplicity and consistency it would be better to apply the AASB definition to all relevant provisions in the SIS Act and not just to one specific reporting regulation.

For further information in relation to our submission, please contact Richard Webb, Policy Advisor Financial Planning and Superannuation at CPA Australia at richard.webb@cpaaustralia.com.au or Tony Negline, Superannuation Leader at Chartered Accountants ANZ at Tony.Negline@charteredaccountantsanz.com.

Yours sincerely,



Tony Negline CA
Superannuation Leader,
Advocacy and Professional Standing,
Chartered Accountants Australia and New Zealand



Richard Webb
Policy Advisor Financial Planning and Superannuation, Policy and Advocacy
CPA Australia



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

1 August 2022

Retirement, Advice and Investment Division
Treasury
Langton Cres
Parkes ACT 2600
By email: superannuation@treasury.gov.au

Superannuation Annual Members' Meeting Notices

Industry Super Australia (ISA) is a research and advocacy body for funds that carry the Industry SuperFund symbol. ISA manages collective projects on behalf of those funds and their five million members. Our aim is to maximise the retirement savings of all our members.

We welcome the opportunity to comment on the draft regulations outlining proposed changes to the disclosure requirements for Annual Members' Meeting (AMM) notices.

ISA is a longstanding supporter of greater transparency in the super industry. Greater transparency through disclosure that is both meaningful and not misleading fosters more informed public discussion of super-related issues, drives accountability in the industry and promotes better practices through comparability and peer review – all of which will ultimately benefit members.

On that basis, while we broadly support the draft regulations, we recommend that:

- ▶ **Recommendation 1:** Information about aggregate dividend payments by funds to shareholders should be disclosed in the AMM notices.
- ▶ **Recommendation 2:** Information about transactions between funds and certain related parties (i.e., where the related party or any related party that receives a financial benefit thereafter ultimately shares the same parent entity as the fund) should be disclosed in the AMM notices.
- ▶ **Recommendation 3:** There should not be *any* double counting of expenditure in the AMM notices.
- ▶ **Recommendation 4:** Together with APRA, the Government should ensure any expenditure disclosures in the notices can be easily reconciled with information reported to and published by APRA about fund expenditures.

ISA strongly supports the Government making the regulations in time to apply to the AMM in respect of the last financial year and we appreciate the timeframes are tight.

However, the Government should consider strengthening the AMM notice disclosures by requiring transparent reporting of dividend payments for the last financial year (if time permits) and future financial years. Otherwise, recommendation 1 – along with the other

recommendations – should be implemented by the Government so that they apply to AMMs in respect of the current financial year (2022-23) and future financial years.

Our recommendations are discussed in further detail below.

Dividend payments

Dividend payments by funds to shareholders can be significant. For example, information provided to the House of Representatives Standing Committee on Economics as part of the Review of the Four Major Banks and other Financial Institutions showed two funds had paid a combined \$1.42 billion in dividend payments to their respective parent entities in the five years to FY20.¹

Members should have the opportunity to consider and question these payments at the AMM, including whether they are reasonable and the impact they have on members' fees and net returns. In ISA's view, the absence of this disclosure in AMM notices is not in the best interests of members and it is unclear why they are not required to be disclosed when other types of payments are.

Therefore, the Government should consider amending the regulations to require aggregated dividend payments by funds to shareholders to be disclosed in AMM notices. Ideally such a change should apply to notices for the AMM in respect of the last financial year (subject to the time constraints for making the regulations) but otherwise subsequent financial years.

Certain related party transactions

It is also evident that the commercial structures of retail super funds leverage the transactions between related parties for profit that ultimately flow to the same parent entity.

More detailed look through provisions are required to provide members with a reasonable level of transparency about the flow of their money with respect to financial arrangements by their fund with a related party, where that related party or any related party that receives a financial benefit thereafter ultimately has the same parent entity as the fund.

While the changes in Schedule 8 to the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019* empower APRA to make reporting standards to collect data on these kinds of transactions on a look-through basis, the standards set by APRA since the amendments were made over three years ago do not appear to require such disclosure.

The Government should work through these issues in greater detail to ensure that future disclosure requirements about these types of related party transactions in the AMM notices are comprehensive and meaningful for members – noting the complexity and diversity of commercial arrangements that are in place which make it difficult for members to see related party arrangements that inappropriately diminish their savings.

¹https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/SuperannuationSector/Documents

Double counting of expenditure

We acknowledge that the draft regulations include amendments that remove the double counting of promotion, marketing or sponsorship expenditure (hereafter referred to as marketing expenditure) and political donations.

However, under the draft regulations, there may still be double counting of:

- ▶ marketing expenditure and industrial body payments,
- ▶ industrial body payments and related party payments,
- ▶ marketing expenditure and related party payments, and
- ▶ expenses that may be considered to be marketing expenditure, industrial body payments and related party payments.

Without similar amendments that remove double counting in these circumstances, the disclosure of these aggregated expenditure items could confuse members and the broader public, as it would overinflate expenses incurred by funds.

Future regulations should therefore include amendments that ensure these amounts are not counted in more than one expense category.

Additionally, future regulations could require funds to clarify that any amounts that would otherwise be counted in more than one expense category in the AMM notice (but is not because of the double counting rules), can also be characterised as forming part of another expense category in the AMM notice.

For example, if several expenses incurred by a fund can be characterised as both marketing expenditure and related party payments, and the double counting rules specify that these expenses are to be disclosed as part of the aggregated related party payments rather than marketing expenditure, the fund could be required to clarify in the AMM notice that the total amount of overlapping expenses could also be considered marketing expenditure.

In our view, this would increase the transparency of a fund's expenditure and the overall utility of the AMM notice for members.

Consistency with APRA reporting and publications

APRA currently collects detailed information about funds' expenses under the superannuation reporting standards. This includes information that is similar to – but is unlikely to be exactly the same as – what is required to be disclosed in a fund's AMM notice, including information about their marketing expenses, sponsorship expenses, political donations, payments to registered organisations and related party payments.

For example, the disclosure of marketing expenditure in the AMM notice **may** cover the following expense types that are required to be reported to APRA:

- ▶ all five expense types under the Marketing and Distribution expense group,
- ▶ existing member campaigns (under the Member Services expense group)
- ▶ member acquisition campaigns (under the Member Services expense group)

- ▶ advertising or marketing (under the Corporate Overheads expense group), and
- ▶ sponsorship (under the Corporate Overheads expense group).

However, it is likely that for some funds, this will not be the case. This potential misalignment is inefficient for funds and increases the regulatory burden and cost of these requirements, which is ultimately borne by members.

To minimise this risk, the Government and APRA should clarify how the expenditure disclosures in AMMs and expense reporting to APRA may differ for funds.

APRA has also indicated that as part of its Superannuation Data Transformation project, it is likely to publish additional detail about each fund's expenses compared to what is currently published in the annual fund-level superannuation statistics (although this has not been confirmed). Regardless, it is likely that APRA will publish at least aggregated data about a fund's expenditure on the expenses that are required to be disclosed in the AMM notice.

To reduce confusion by members and the broader public, we recommend that the Government and APRA ensure that expenditure disclosures under the AMM notices can be easily reconciled with any relevant APRA publications.

If you have any questions, please feel free to contact me or Ella Cebon (ecarbon@industrysuper.com).

Kind regards

Anne Nguyen
Policy Adviser



THE HON STUART ROBERT MP
SHADOW ASSISTANT TREASURER
SHADOW MINISTER FOR FINANCIAL SERVICES
MEMBER FOR FADDEN

28 July 2022

Treasury
Langton Cres
Parkes ACT 2600

Via email: superannuation@treasury.gov.au

To whom it may concern

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

Yours sincerely

A handwritten signature in black ink that reads "Stuart Robert". The signature is written in a cursive, flowing style.

STUART ROBERT

Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Subregulation 1.03(1)

This draft regulation changes the meaning of accounting standard.

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

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

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

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

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

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

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

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

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

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

When releasing the review, APRA Member Margaret Cole said²:

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

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

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

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

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

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

5. After subregulation 2.10(2)

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

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

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

6. Subregulation 2.10(3)

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

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

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

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

Conclusion

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

Recommendation

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

28 July 2022

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 Financial Services Council (**FSC**) welcomes the opportunity to comment on Exposure Draft *Superannuation Industry (Supervision) Amendment (Annual Members' Meetings Notices) Regulations 2022 (Draft Regulations)* outlining proposed changes to the disclosure requirements of Registrable Superannuation Entity (**RSE**) Licensees in relation to Annual Members' Meeting notices.

The FSC is a peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services. Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers and financial advice licensees. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The FSC has examined the three changes proposed within the Draft Regulations. In the time available for consultation, the FSC has not identified any implementation issues for FSC superannuation members in complying with these proposed changes.

We also make the following observations with respect to two aspects of the proposed changes:

- Removal of the requirement for itemised disclosure for certain categories of expenses; and
- Alignment of the definition of 'related party' with that used in the Australian Accounting Standards.

Removal of itemised expense disclosure to members

The draft regulations propose to repeal itemised disclosure of any expenses within the following expense categories that RSE Licensees need to provide to accompany notices of annual member meetings to all superannuation fund members:

- promotion, marketing and sponsorship expenses;
- political donations;
- payments to industrial bodies; and

- related party payments.

We note that RSE Licensees are separately required to disclose similar data to APRA as part of APRA's ongoing Superannuation Data Transformation project. Under *Reporting Standard SRS 332.0 Expenses (SRS 332)* made on 15 September 2021, RSE Licensees must disclose itemised information including for the following expense categories for each annual reporting period on and after 30 June 2022:

- marketing related expenses;
- sponsorship;
- payments or donations to industry bodies;
- payments or donations to political parties;
- payments or donations to trade bodies; and
- payments to a related party.

The SRS 332.0 expense categories are broadly comparable to those which RSE Licensees must currently disclose itemised expenses to members. We understand that APRA plans to publish fund-level expenses data for these expense categories at an aggregated level once the 'best endeavours' reporting period for SRS 332.0 ends¹, which is currently set for periods ending on and after 1 July 2023.

We also note that the definition of 'aggregate promotion, marketing or sponsorship expenditure relating to the entity for the year of income' set out under the Draft Regulations 2.10(2)(b) only captures external expenditure on promotion and marketing or sponsorship. As any internal expenditure on these activities would not therefore be included under this definition, we suggest that the label be amended to make clear it refers to payments to external parties only.

We further note that contracts may not specifically identify an amount to be spent on promotion, marketing or sponsorship. It may be worthwhile for the explanatory material to indicate that in such circumstances it would be expected that RSE Licensees would identify an amount consistent with APRA reporting requirements under SRS 332.

Alignment of related party definition

The draft regulations propose to change the definition of 'related party' to align with the definition of a related party set out in *AASB 124 Related Party Disclosures (AASB 124)*. As noted by the Exposure Draft Explanatory Statement, the current 'related party' definition is a bespoke definition. In contrast, the AASB 124 definition is more widely used and recognised by industry participants.

The exact impact of the proposed change in the 'related party' definition will depend on the specific circumstances and arrangements of each RSE Licensee.

As mentioned above, SRS 332 requires RSE Licensees to provide APRA with itemised information for payments to a 'related party'. The SRS 332 'related party'

¹ See APRA Response Paper titled '*SDT Publications and Confidentiality*', published 25 July 2022.

definition is contained in *SRS 101.0 Definitions for Superannuation Data Collections (SRS 101)* and currently refers to the bespoke 'related party' definition. Should the regulations be made as proposed, our expectation is that APRA would naturally look to revise the 'related party' definition set out in SRS 101 to ensure consistency of reporting.

We would be happy to answer any questions you may have on this submission. Please feel free to contact Aidan Nguyen on ANguyen@fsc.org.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read "S. Premetis". The signature is stylized with a long horizontal stroke at the end.

Spiro Premetis
Executive Director
Policy and Advocacy
Financial Services Council

28 July 2022

Mills Oakley
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Attention:

Superannuation Industry (Supervision) Amendment (Annual Members' Meetings Notices) Regulations 2022.

We are pleased to have an opportunity to make a submission on the exposure draft of the *Superannuation Industry (Supervision) Amendment (Annual Members' Meetings Notices) Regulations 2022 (Draft Regulations)*.

About Mills Oakley

Mills Oakley is a leading independent Australian law firm with over 130 partners and more than 700 staff located in Melbourne, Sydney, Brisbane, Canberra and Perth.

We are a Top 10 Australian law firm by size. Our mission is to provide a superior service experience while operating an efficient business model that delivers value for clients, without compromising quality.

We service a full range of clients, from ASX200 corporates through to government departments and agencies, private companies, and individuals.

We also have a strong sense of social purpose, assisting vulnerable Australians through our dedicated pro bono firm, Everyday Justice. Our commitment to social justice and the community is indicative of the sense of integrity that we bring to everything we do and it is another reason for the trust our clients place in Mills Oakley as a preferred legal service provider.

Our Financial Services team advises a range of superannuation trustees, responsible entities, financial advice firms and other participants in the financial services industry. Mills Oakley has also collaborated with Argos Reg-Tech in providing [Argos](#), an online regulatory change management service, to assist financial services firms manage the the significant operational, compliance and legal risks arising from the volume of complex changes to their regulatory environment.

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Submission

It is our view that the amendments in the Draft Regulations meet their purpose, as stated in the draft Explanatory Statement (**Draft ES**):

“The Regulations ensure that superannuation funds are required to disclose an appropriate amount of information to members, while keeping compliance costs low to preserve members’ money for retirement.”

This indicates an intention that the Draft Regulations balance two objectives: a member’s need for information; and the impact of compliance costs on the retirement savings of members. We address how we believe the Draft Regulations satisfy each of these objectives below.

Our submissions focus on the repeal of the existing requirement to make itemised disclosure of certain categories of expenses (**Itemised Disclosure**) and require instead only a summary of these expenses (**Summary Disclosure**), broken into categories of marketing expenses; political donations; payments to industry bodies or trade associations; and payments to related parties. The Draft Regulations would also change the scope of the category of “payments to related parties” to align it with information already disclosable by superannuation trustees (or RSE licensees).

In summary, we submit as follows:

1. The Itemised Disclosures are highly unlikely to have any value to fund members and, if they would have value to a particular member, there is an existing mechanism through which they can obtain it.
2. The regulatory impact of the Itemised Disclosure obligation was grossly underestimated and its repeal would significantly reduce compliance costs on the retirement savings of superannuation fund members and thousands of organisations affected through possibly unintended consequences.

Appropriate amount of information to members

In our view there is no basis to support an argument that the existing requirement of Itemised Disclosure is appropriate.

The Itemised Disclosure requirement was inserted by *Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Improving Accountability and Member Outcomes) Regulations 2021 (AMM Regulations)*. In the Explanatory Statement (**ES**) to these Regulations, it was stated that these regulations support the amendments in the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019* which are stated to have “introduced measures to increase the amount and quality of information available to superannuation fund members and other stakeholders.”

The only basis stated in the ES for providing Itemised Disclosure is: “Disclosure will enable members to ask questions about the purpose and value of this expenditure”.

The basis for Itemised Disclosure can therefore be summarised as: to increase the amount and quality of information, and to enable members to ask questions about the purpose and value of the expenditure.

The basis of Itemised Disclosure is not substantiated in the ES and is undermined by the findings in *ASIC’s REP 632 Disclosure: Why it shouldn’t be the default*, a evidence based report on ASIC’s research into behavioural economics and consumer experience. Under the heading “Disclosure does not solve the complexity in financial services markets”, ASIC states:

“One of the key assumptions on which disclosure has traditionally been premised is the idea that if information asymmetries are corrected, we will make optimal choices. However, this assumption disregards how difficult it can be to choose the best option (if, in fact, it is possible at all), given the computational complexities involved. As the Nobel laureate Richard Thaler says, ‘People aren’t dumb, the world is hard’.”¹

¹ Page 8

Regardless of the merits of disclosure, we believe Itemised Disclosure is also not appropriate because there is currently a mechanism for members to obtain further information about the management of their superannuation fund in the *Corporations Act 2001*.

If a member seeks further information about what is comprised in the Summary Disclosure, this could likely be obtained by way of a request under s1017C of the Corporations Act, which requires that a superannuation trustee provide information that the concerned person reasonably requires for the purposes of understanding the management of the superannuation entity. This provision also has protections addressing some of the concerns raised by the industry in the making of the AMM Regulations, such as the protection of “information having a commercial value that would be reduced or destroyed by the disclosure”.

A contravention of s1017C is a criminal offence with a maximum penalty of 2 years imprisonment or 2,400 penalty units for body corporate (\$532,800).

We note the public commentary about the adverse impact the Draft Regulations would have on members because of the reduction in transparency. These comments have not been supported by any evidence of the need or desire for such transparency by members. If there is indeed a need, and that need is based on a good faith interest in how their superannuation fund is operated, they will be able to access this information through the existing rights of members without causing an adverse financial impact of members who don't require this information, both by the disclosure of commercially sensitive information and the associated compliance costs.

Impact of compliance costs

We note that the Draft ES does not contain a Regulatory Impact Statement because it is considered that the amendments “ . . . have been assessed as having no more than a minor regulatory impact (OBPR Reference Number OBPR22-02488). Accordingly, no Regulatory Impact Statement has been prepared.”

We understand that changes are considered to be minor where they do not substantially alter the existing regulatory arrangements for businesses, individuals or community organisations.²

There was, however, a Regulatory Impact Statement in the ES to the AMM Regulations to the regulations that would be amended by the Proposed Regulations. It stated:

“A regulation impact statement (RIS) was undertaken in relation to the primary legislation, the Amending Act. The scope of that RIS included any regulations which would prescribe information to be provided to members.

The regulatory impact for the primary law measures, including any regulations made, were estimated to have a start-up cost of \$8.5 million and ongoing costs of \$13.7 million which result in an estimated annual compliance cost impact, averaged over 10 years, of \$14.6 million.”

We consider the impact of the Draft Regulations would be to significantly reduce compliance costs. This is principally because they would remove a potentially unintended consequence of the drafting of the requirement of the Itemised Disclosure of the “related party” category.

The current requirement for disclosure for the “related party” category is in regulation 2.10(1)(h) of the SIS Regulations. It requires disclosure in the Notice of Annual Member Meeting:

- “(h) if any payments were made, by the entity (the **main entity**) during the year of income, to any of the following:
 - (i) a connected entity of the RSE licensee of the main entity;
 - (ii) an associated entity of another entity (the **third party**) if the third party is a connected entity of the RSE licensee of the main entity;
 - (iii) an entity over whom the RSE licensee of the main entity has significant influence;

² Office of Best Practice Regulation’s “OBPR involvement for minor and more than minor impacts”.

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

This obligation is extraordinarily onerous in application.

Under paragraph 2.10(1)(h)(ii), a corporate RSE licensee must identify all of its associated entities as defined in s50AAA of the Corporations Act, and then seek to identify in respect of each of those entities, whether they have any associated entities. Having identified such entities, the RSE licensee must identify and then disclose any payments during the relevant year.

A holding company of the RSE licensee may be an associated entity if the operations, resources or affairs of the principal are material to the associate. Assessing that may involve judgement. The shareholders of the RSE licensee and beneficial owners of shares who control exercise of the shareholders right may be associated entities if the shareholding is material to them. Assessing this will require judgement. If the RSE licensee is controlled by another entity, and that entity controls a third entity and the operations, resources or affairs of both the RSE licensee and the third entity are both material to the controller, the third entity will also be an associated person. Determining this involves judgement concerning the affairs of the controller and the third entity which may be difficult for the RSE licensee. These issues are multiplied when the text is applied in respect of each associate, as the RSE licensee may not have information to enable the determination or any right to obtain it.

To be clear, the above process will only satisfy one of the six categories under reg 2.10(1)(h).

Item (vi) is potentially less complex but has far reaching implications. It requires the RSE licensee to conduct a data matching exercise involving a potentially significant amount of other organisations, likely community organisations. It requires the RSE licensee to:

1. identify all organisations (**Third Parties**) which have a person who is “key management personnel” who is also an executive officer of the RSE licensee;
2. identify all “associated entities” of Third Parties (**Third Party Associates**); and
3. identify all of the Third Party Associates to whom the RSE Licensee makes payments.

This will require an RSE licensee to request that Third Parties apply the complex legal and accounting concepts of “key management personnel” and “associated entity” to their organisations. If the Third Parties will not do this, they may be potentially liable to prosecution for being involved in a contravention by the RSE licensee of the SIS Act.

The unreasonableness of this requirement can be illustrated by the example where an executive officer of an RSE licensee is a committee member of a local football club.

The RSE licensee will be required to contact the local football club and request that they identify their “key management personnel” and “associated entities”. These are complex terms.

“Key management personnel” is defined in s9 of the Corporations Act by reference to the accounting standards. *AASB 124 Related Party Disclosures* defines “key management personnel” 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.

“Associated entity” is defined in s50AAA of the Corporations Act and involves the application of broad concepts such as “control”, “influence” and “materiality”.

The football club may well require legal advice on the meaning of these terms and their application to the football club.

In our conversations with our superannuation trustee clients, we have been advised that this may impact 60 to 100 organisations, per trustee.

There are further complexities and judgement required in applying reg 2.10(1)(h), such as interpreting and applying broad concepts such as “connected entity” and “significant influence”.

We hope that the above analysis is sufficient to demonstrate the excessive compliance costs that would be imposed by the current Itemised Disclosure requirement, not only on superannuation trustees but on broader community organisations, many of which will not have the resources to apply such complex legal and accounting concepts.

* * *

If you have any questions or require further information, please do not hesitate to contact me on +61 3 9605 0832 or mbland@millsoakley.com.au.

I am grateful for the assistance of my colleagues Geoffrey McCarthy and Jules Ioannides in preparing this submission.

Yours sincerely

MARK BLAND
PARTNER



SUBMISSION

Submission to Treasury — Superannuation Annual Members' Meeting Notices

28 July 2022

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Retirement, Advice and Investment Division
The Treasury
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Via email: superannuation@treasury.gov.au

28 July 2022

Dear Sir/Madam

Annual Members' Meeting Notices

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the draft regulations outlining proposed changes to the disclosure requirements for superannuation Annual Members' Meeting notices.

ASFA is a non-profit, non-partisan national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$3.4 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing almost 90 per cent of the 17 million Australians with superannuation.

If you have any queries or comments in relation to the content of our submission, please contact Helena Gibson, Senior Policy Adviser on 0423 175 385 or by email hgibson@superannuation.asn.au.

Yours sincerely

Julian Cabarrus



Director Policy Operation, Member Engagement and External Relations

General Comments

ASFA welcome the release of the Draft Regulations to update the annual member meeting disclosure requirements to reduce the regulatory burden for RSE licensees. The superannuation industry is a highly regulated industry with the overarching requirement to act in members best financial interests.

The Draft Regulations propose the removal of itemised disclosure for the following four categories of expenses:

- Promotion, marketing, and sponsorship
- Political donations
- Payments to industrial bodies
- Related party payments

We believe the level of intricate detail in the disclosures arising from the existing requirements could be overwhelming to members. For this reason, we support the removal of itemised disclosure, however, believe it is still important that RSE licenses are required to disclose an aggregate figure for each of the four categories.

We support the clarification provided by the Draft Regulations so that political donations are not double counted under both the 'promotion, marketing and sponsorship' category and 'political donations' category. There still however, remains a risk of double-counting for some marketing and sponsorship activities. For example, payments to entities (as a 'recipient') that may include a marketing component may also have to be disclosed as marketing expenses (as a 'type'). We therefore propose that the Regulations include guidance that an expense included in 'promotion, marketing and sponsorship' should not have to be included in another disclosure.

We are also seeking clarity on definitions within the Draft Regulations as follows:

1. The current definition of 'payment' does not provide clarity about whether accrued liabilities/expenses are to be disclosed or not. ASFA are proposing alignment instead with the definition of 'expenses' under the AASB standards as this would provide better clarity of the treatment of these expenses.
2. The current definition of 'promotion, marketing and sponsorship' expenditure makes references to contracts, it is unclear in arrangements where there are ongoing contract terms whether incidental expenditure can be invoiced as a one-off.

Finally, ASFA support aligning the definition of 'related party' to the definition in the Australian Accounting Standards for the purpose of identifying related party payments. This promotes consistency by ensuring that the Draft Regulations adopt a widely used and industry-recognised definition.

To ensure consistency with the APRA data reporting, we recommend the definitions in SRS 332.0 are updated to ensure a consistent definition is applied to the annual member notice and the definitions in SRS 332.0.

July 2022

Superannuation Annual Members' Meeting Notices

Public scrutiny of super fund spending is crucial to ensure the system is delivering for people. Transparency promotes good governance, reduces information imbalances, and creates an informed public discussion about the appropriateness of superannuation fund spending. The superannuation market lacks many of the characteristics that drive market efficiency, making it more important that fund members and the broader public are equipped with the right information to keep funds accountable.

Neither aggregate nor itemised expenditure disclosure alone will deliver adequate scrutiny. What is most important is that disclosure be coupled with quantifiable justifications of how the expenditure is directly benefiting members of the fund. For example, knowing the advertising spend for a single television advertisement helps members less than knowing the marketing spend on a particular campaign and how it directly and quantifiably benefited members.

Enshrining obligations to justify expenditure in the regulations will lead to a more efficient use of member money and a more grounded and informed public debate about superannuation fund expenditure

Annual Members' Meetings are one of the few ways members can exert pressure on their funds directly. In making regulations about super fund disclosure requirements, the Federal Government must ensure people are equipped with clear, concise and *effective* information; without this these meetings risk descending into pantomime.

Funds don't have a good track record in being able to justify expenditure. APRA's 2021 thematic review found a "lack of evidence of clear metrics to assess the benefits of marketing expenditure to their members.". Over time, we recommend APRA develop common metrics to measure the costs and benefits derived from these expenditure categories.

We also support a requirement on APRA to collate these public disclosures and justifications in a central report, to inform public debate and allow relevant comparisons between funds according to their size, level of expenditure and member benefits. APRA collects and will soon start publishing more data about fund expenses. We see significant benefits in detailed expense data being centrally published by APRA. We look forward to engaging with APRA's further consultation on this issue in the coming months.

The goal of Annual Member Meetings disclosures

The goal of the Annual Members' Meeting requirements is to provide members with simple and clear information that will empower them to effectively engage with trustees during the meeting and hold trustees accountable for member outcomes. Despite industry complaints of regulatory burden, we have not seen any concrete evidence to substantiate this notion. As part of this consultation we expect superannuation funds to provide credible evidence of the cost of disclosure. This will allow public scrutiny of the merits of moving to aggregated disclosure only. A proper balance needs to be struck between the cost of disclosure with the value this disclosure would deliver in scrutinising fund spending. We would also encourage the Federal government to consider low cost disclosure options, such as digital only notices, to reduce cost on superannuation funds while maintaining adequate disclosure.

The best financial interests of fund members need to be the driving purpose in weighing fund disclosure. The cost of unchecked spending has a significant impact on members and we need greater scrutiny of the justification of certain expenditure to drive better member outcomes.

The cost of unchecked spending

There has been a lack of transparency and accountability over fund spending. APRA's review of fund expenditure in October 2021 raised questions about how marketing and sponsorship expenditure benefits members. That review analysed the decision making of 12 funds in relation to \$87 million spent on marketing between 2018 and 2020.

APRA's view was that "given the YFYS reforms, some instances of expenditure examined did not have sufficient evidence to demonstrate that the expenditure would be in the best financial interests of members."¹ They found:

- a lack of evidence of clear metrics to assess the benefits of marketing expenditure to their members;
- limited evidence of ex-post review to demonstrate that the marketing expenditure has achieved its intended outcomes, again including the benefit to members; and
- an over-reliance on aggregate, or high level, considerations of marketing expenditure impact (e.g. changes in membership numbers) without demonstration of specific improved outcomes for members.²

Mere disclosure of expenditure (whether itemised or aggregate) will not, on its own, solve these problems. Funds need to improve their analysis and justification of expenditure. Requiring funds

¹ Findings from APRA's superannuation thematic reviews, p16, October 2021

² Findings from APRA's superannuation thematic reviews, p16, October 2021

to justify expenditure to members will ensure a higher degree of accountability. The Annual Members' Meeting notice is an appropriate mechanism via which this can occur.

Annual Member Meetings are not working to provide accountability about expenses

Some information about aggregate level expenses is already in the public domain, such as through annual reports. We have seen examples of members using this information at AMMs to ask questions about expenditure. Consistent with APRA's findings the example below highlights how a fund fails to answer a question from a member, instead relying on high level considerations rather than being able to demonstrate specific benefits to members.

In one fund's most recent Annual Members' Meeting, they were asked to explain their aggregate \$16.3 million expenditure on marketing and sponsorship.³ The member asked:

(The fund) spends enormous amounts of members' funds on sports sponsorship. These resources could be better used to update online systems and improving customer support. When will (the fund) management rebalance the use of members' resources? 13.3% or \$16.3m of Admin expenses relate to marketing and sponsorship. What is the cost of current sporting sponsorship and how many such contracts? What independent cost/benefit has been undertaken to justify and the dollar returned for dollar spent?

The entire response provided nothing concrete or measurable and did not answer the question. The fund's reply was:

At (our fund), our primary goal as trustee of the Superannuation Fund is to optimise member financial outcomes for retirement.

In order to achieve that paramount objective, (the fund) has in place a detailed set of documented strategic plans and objectives. Those plans and objectives are continually reviewed and optimised by our executive and Board over time to reflect changes in member needs, economic conditions and regulatory requirements.

As part of our strategic objectives, we recognise and act on the basis that one of the most effective and efficient ways to optimise member financial outcomes is to attract and retain members, which in turn increases funds under management and resultant scale of the Fund.

(The fund) has developed and analysed objective data which demonstrates that greater scale in the Fund, and the resultant improved economic efficiencies and financial resources, delivers tangible financial outcomes for our members in their retirement.

³ [Minutes and Q&As of the 2021 Annual Members' Meeting. p26. December 2021](#)

By way of example, increased scale allows us to invest in innovative product development and services, invest in proven asset classes such as unlisted infrastructure that are in the best financial interests of our members, whilst at the same time keeping our administration fees low. Together, these outcomes are designed to result in a higher net return to members.

Increased brand awareness and association is critical in achieving the above outcomes in the best financial interest of members. (The fund) operates in a highly concentrated and competitive superannuation market, where Australians are rightfully being encouraged to actively choose their preferred fund. By increasing our brand awareness, we are able to ensure that, when making that very important decision, the Fund offering — including our strong long-term performance and low fee model — is front of mind.

(The fund) has in place documented and rigorous governance processes to ensure our marketing program, including partnerships with sporting and other industry organisations, is appropriately adapted towards delivering tangible financial outcomes for our members.

Part of those governance procedures and protocols includes ensuring that any sporting partnerships that we enter into are carefully selected and regularly monitored to deliver a high level of positive brand exposure — particularly as compared to other mainstream media like TV and Radio.

Given the commercial-in-confidence nature relating to a number of these contracts and arrangements, and the competitive advantages and intellectual properties attached to the arrangements, (The fund) does not publicly disclose the exact amounts spent on sponsorships for sporting codes such as the AFL or specific teams.

Importantly, these costs are not derived from the Fund's investment returns and therefore does not reduce the net return delivered to members. Rather, all marketing and partnership costs are funded entirely from our low account-based administration fee.

As APRA's thematic report found, this type of response lacks any clear metrics that would allow a member to actually scrutinise the benefits of the expenditure. The considerations are so high level as to be useless. A fund should be in a position to inform members of exactly how the spending translated into member retention and new customer flows and how these changes in membership numbers materially benefited members. To enable this the Federal Government should amend the regulations to require a fund to quantify the benefits that flow to members under each of the proposed expenditure categories.



Super Consumers Australia's work

In February 2021, Super Consumers Australia identified a small number of funds that had an upcoming Annual Members' Meeting for the 2021 financial year. This group contained a portion of products which were deemed underperforming.⁴ We attempted to ask the following questions on expenditure to these funds:

- Do your staff attend industry superannuation conferences? How much does this cost and how do you justify it? What are the prices of these conferences compared to other industry conferences?
- Do you have evidence that any marketing spend you have is in the best financial interests of members? For example, can you demonstrate the average number of members you acquire per marketing dollar spend?
- Other funds have stated they have documented and rigorous governance processes to ensure their marketing program, including partnerships with sporting and other industry organisations, is appropriately adapted towards delivering tangible financial outcomes for members. Do you do this? Can you share that with members?
- It has been found that at least \$42 million a year of members' money is spent by super funds on major super lobby groups. Do you contribute to one of the main lobby groups and how do you consider this amount to be in the best financial interests of members?

None of the funds we wrote to provided a response to these questions at their meeting. These are reasonable questions that any fund should have turned its mind to and provide a response to its members. The fact that they all failed to respond speaks to the need to have strong regulations which require a fund to disclose this information. Without this fund members and consumer advocates are not in a position to apply adequate scrutiny to fund expenditure.

The need for more scrutiny of fund expenses

As it stands, the best financial interest duty and record keeping requirements would require a fund to provide evidence to APRA on the value expenditure is delivering to members. It is up to the regulator to assess this evidence behind closed doors. Establishing an opaque system that requires the regulator to act alone in assessing member outcomes misses an opportunity for consumers and consumer advocates to hold funds accountable directly. We can see from the public transparency created by measures such as the Your Future, Your Super performance test, how important public scrutiny is to the proper functioning of the superannuation sector. The reputational risk of failing the test against an objective measurable test led to underperforming

⁴ These questions were submitted via the process set out by each fund in the month of February. This included through online portals and directly via email. The list includes Bendigo Super, AMP, Media Super, EISS, BT, Macquarie Superannuation Plan, MLC and UniSuper.



funds taking decisive action to remedy their failure. This type of public scrutiny supports the work of the regulator and helps deliver a healthier market.

By the same token, simply disclosing expenditure in either aggregate or itemised form is unlikely to drive significant improvement. Prior to the heatmaps and performance test we knew key information about a fund's performance, such as its fees and returns, but disclosure alone failed to see funds address chronic underperformance. This changed when they were required to compare themselves to an objective standard in the performance test and the metrics in the heatmaps. This is the type of scrutiny that needs to be applied to expenditure if we want to focus on member outcomes. Requiring funds to justify their expenditure, via a cost-benefit analysis, would provide this much needed scrutiny.

As part of the Annual Members' Meeting notice, funds should explain the measurable benefits members are expected to derive from aggregate expenditure decisions, justifying their rationale. For example, for marketing expenses, trustees could identify the expected benefits in terms of member growth or member retention. They should then quantify how this growth and retention leads to tangible benefits, such as cost savings due to scale. Failure to do this should be a red flag to regulators and members alike, the resulting scrutiny should drive improvements in the market.

Recommendation:

The Notice of an Annual Members' Meeting to members should outline the measurable benefits to members alongside the aggregate expenditure category.

Collating public disclosure in a central report

Annual Members' meetings are just one part of the transparency framework for superannuation. Funds are also subject to financial reporting obligations, product disclosure requirements and data reporting obligations to APRA. As part of the data reporting obligations, APRA will also be publishing more detailed expense data through their data transformation project. This information can be extremely valuable for members, consumer advocates and industry if it can be harnessed in a clear, concise and effective way.

We support a requirement for APRA to collate fund expenditure data and justifications in a central report, to inform public debate and allow relevant comparisons between funds according to size, level of expenditure and member benefits. For the AMM notice disclosure, this would ensure each fund's aggregate disclosure and justification can be compared across the market. This will bring a high level of understanding to fund expenditure and ensure there is greater accountability to keep spending in check.



Recommendation:

APRA collates fund expenditure data and justifications in a central report, to inform public debate and allow relevant comparisons between funds according to their size, level of expenditure and member benefits.

Include profit in the notice

The Annual Members' Meeting notice should also be strengthened by requiring funds to disclose information about profit extracted from the fund. This would increase funds' accountability for how they manage their duties to fund members and to recipients of those profits (e.g. shareholders).

When one bank was questioned at a Parliamentary Committee about the profits it received from its superannuation fund, it stated "Profits to (the bank) from these services that solely relate to superannuation funds are not easily determinable because the (bank) Group entities provide the same service to superannuation and non-superannuation customers and the historical information to split these businesses is not available as it has not been required by regulators."⁵ When another fund was questioned, they stated there was a yearly profit of \$240 million after tax.⁶ It is clear from the evidence that profit extracted is a significant and distinguishable category of expenditure. However without regulatory guidance the sector is unlikely to collect, disclose and explain how this expenditure benefits members.

This information should be displayed in a simple aggregated fashion so it can be compared to other fund expenditure. It may require capturing amounts such as dividends and looking through intra-group arrangements to determine the profit component.

Recommendation:

The Notice of an Annual Members' Meeting to members should include aggregate information relating to profits and justification of how these arrangements benefit members.

⁵ House of Representatives Standing Committee on Economics, Review of the four major banks and other financial institutions, WBC88QW

⁶ House of Representatives Standing Committee on Economics, Review of the four major banks and other financial institutions, CBA72QON