ASSISTANT MINISTER FOR ELECTORAL MATTERS
PARLIAMENTARY SECRETARY TO THE MINISTER FOR FINANCE

Departmental No. 2021/9

Executive Council
Meeting No. ....6...................

Approved in Council

s 22(1)(a)(ii)

David Hurley
Governor-General

15 APR 2021

Filed in the Records
of the Council

s 22(1)(a)(ii)

Secretary to the Executive Council

Minute Paper for the Executive Council

Subject

Commonwealth Electoral Act 1918
Referendum (Machinery Provisions) Act 1984
Electronic Transactions Act 1999

Electoral Legislation Amendment (Miscellaneous Measures) Regulations 2021

Recommended for the approval of His Excellency the Governor-General in Council that he make Regulations in the attached form.

s 22(1)(a)(ii)

Ben Morton
Assistant Minister for Electoral Matters
Parliamentary Secretary to the Minister for Finance

Electoral Legislation Amendment (Miscellaneous Measures) Regulations 2021

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 15 April 2021

s 22(1)(a)(ii)

David Hurley
Governor-General

By His Excellency's Command

s 22(1)(a)(ii)

Ben Morton
Assistant Minister for Electoral Matters
Parliamentary Secretary to the Minister for Finance

OPC64945 - B

Contents

1 Name

This instrument is the *Electoral Legislation Amendment (Miscellaneous Measures) Regulations 2021*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

(a) the *Commonwealth Electoral Act 1918*;

(b) the *Referendum (Machinery Provisions) Act 1984*;

(c) the *Electronic Transactions Act 1999*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Electoral and Referendum Regulation 2016

1 Section 5 (definition of *electronically assisted voting method*)

Omit "sight-impaired", substitute "electronically assisted".

2 Section 5

Insert:

registered electronically assisted voter means:

(a) a sight-impaired person; or

(b) an Antarctic elector;

who is registered with the Electoral Commissioner for the purpose of voting by an electronically assisted vote.

3 Section 5 (definition of *registered sight-impaired voter*)

Repeal the definition.

4 Division 1A of Part 4

Repeal the Division.

5 Division 1 of Part 4 (heading)

Omit "**for sight-impaired people**".

6 Subsection 15(1)

Repeal the subsection, substitute:

(1) The Electoral Commissioner must make arrangements for the establishment of one or more call centres to receive telephone calls from sight-impaired persons or Antarctic electors who wish to:

(a) register for the purpose of being eligible to vote by an electronically assisted vote; or

(b) vote by an electronically assisted vote.

7 Paragraph 15(2)(a)

After "person", insert "or Antarctic elector".

8 Paragraph 15(2)(b)

Omit "sight-impaired", substitute "electronically assisted".

9 Subsection 15(2) (example)

After "person", insert "or Antarctic elector".

10 Paragraph 16(1)(a)

Omit "sight-impaired", substitute "electronically assisted".

11 Paragraph 16(1)(b)

Omit "sight-impaired", substitute "electronically assisted".

12 Subsection 16(1) (note)

After "sight-impaired", insert "or an Antarctic elector".

13 Subsections 16(2) and (3)

Omit "sight-impaired", substitute "electronieally assisted".

14 Subsection 16(4)

Omit "sight-impaired", substitute "electronically assisted".

15 Subsection 17(1)

Omit "sight-impaired" (wherever occurring), substitute "electronically assisted".

16 Paragraph 17(2)(c)

Omit "sight-impaired", substitute "electronically assisted".

17 Paragraph 17(3)(b)

Omit "sight-impaired" (wherever occurring), substitute "electronically assisted".

18 Subparagraph 17(3)(i)(i)

Omit "sight-impaired", substitute "electronically assisted".

19 Subsection 18(1)

Omit "sight-impaired", substitute "electronically assisted".

20 Subsection 18(2)

Omit "sight-impaired", substitute "electronically assisted".

21 Section 19 (heading)

Omit "**sight-impaired**", substitute "**electronically assisted**".

22 Subsections 19(1) and (2)

Omit "sight-impaired", substitute "electronically assisted".

23 At the end of paragraphs 24(2)(d) and (3)(d)

Add "or Antarctic elector".

24 Schedule 3

Repeal the Schedule.

Electronic Transactions Regulations 2020

25 Clause 1 of Schedule 1 (table item 19)

Omit "and (5));", substitute "and (5))".

26 Clause 1 of Schedule 1 (table item 19)

Omit "(e) Part XVII".

27 Clause 1 of Schedule 1 (table item 78)

Omit ", IVA and V", substitute "and IVA".

EXPLANATORY MEMORANDUM

Minute No. 9 of 2021 – Assistant Minister for Electoral Matters, Parliamentary Secretary to the Minister for Finance

Subject - *Commonwealth Electoral Act 1918*

Referendum (Machinery Provisions) Act 1984

Electronic Transactions Act 1999

Electoral Legislation Amendment (Miscellaneous Measures) Regulations 2021

The proposed instrument would expand the electronically assisted voting methods, which are currently only available to blind and low-vision voters, to Australians working in Antarctica, and to make other consequential amendments.

The *Commonwealth Electoral Act 1918* (the Electoral Act) and the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act) provide for federal election and referendum matters. The *Electronic Transactions Act 1999* (the Electronic Transactions Act) provides that certain legislation is exempt from the requirements of the Electronic Transactions Act where prescribed in regulations.

Section 395 of the *Commonwealth Electoral Act 1918*, section 144 of the *Referendum (Machinery Provisions) Act 1984*, and section 16 of the *Electronic Transactions Act 1999* provide that the Governor-General may make regulations prescribing all matters which by the Acts are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to the Acts.

On 1 December 2020, the *Electoral Legislation Amendment (Miscellaneous Measures) Act 2020* (the Miscellaneous Measures Act) amended:

- Part XVB of the Electoral Act and Part IVB of the Referendum Act to broaden the categories of voters entitled to access electronically assisted voting to include Antarctic voters; and
- the Electoral Act to repeal Form E in Schedule 1 to the Electoral Act, and substituting the current version of the Senate ballot paper form.

The proposed *Electoral Legislation Amendment (Miscellaneous Measures) Regulations 2021* (the proposed Regulations) would amend the *Electoral and Referendum Regulation 2016* (the Electoral Regulation) and the *Electronic Transactions Regulations 2020* (the Electronic Transactions Regulations) to reflect the amendments made by the Miscellaneous Measures Act.

The proposed Regulations would expand the electronically assisted voting methods, which are currently only available to blind and low vision voters, to Australians working in Antarctica. This replaces the special arrangements for Antarctic electors in the Electoral Act and the Referendum Act. The amendments to Part XVB of the Electoral Act and Part IVB of the Referendum Act broaden the categories of voters entitled to access electronically assisted voting to include Antarctic voters.

s 22(1)(a)(ii)

[redacted]

Extending the existing electronically assisted voting mechanisms to Antarctic electors streamlines voting processes which currently involve transcribing votes. It will also improve the secrecy of the ballot for Antarctic electors. It allows individual Antarctic electors to directly phone through their vote to an existing authorised call centre rather than require another person at the station to transmit the votes to the Australian Electoral Commission.

The proposed Regulations repeal the Senate ballot paper (Form E) in Schedule 3 of the Electoral Regulations. The Senate ballot paper was inserted in the Electoral Regulations by the *Electoral and Referendum Amendment (Modernisation) Regulations 2019* to replace Form E in Schedule 1 to the Electoral Act and correct errors in the formatting and footnotes in Form E left behind by the Senate voting reforms in 2016. The Miscellaneous Measures Act repealed Form E in the Electoral Act, substituting in the current version of the Senate ballot paper form. As a consequence, the Senate ballot paper template is no longer required in the Electoral Regulations.

Additionally, the proposed Regulations would make consequential amendments to the Electronic Transactions Regulations to reflect the amendments to the Electoral Act made by the Miscellaneous Measures Act, which repealed Part XVII of the Electoral Act and Part V of the Referendum Act that prescribed special arrangements previously in place for Antarctic electors. Part XVII of the Electoral Act and Part V of the Referendum Act are prescribed in the Electronic Transactions Regulations as being exempt from the application of certain provisions of the Electronic Transactions Act.

The Electronic Transactions Act ensures that a transaction under a Commonwealth law will not be invalid simply because the transaction was conducted through electronic communication. Commonwealth laws listed in Schedule 1 to the Electronic Transactions Regulations are exempt from the general application of the Electronic Transactions Act.

Details of the proposed Regulations are set out in the Attachment.

The primary Acts specify no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

The proposed Regulations would be a legislative instrument for the purposes of the *Legislation Act 2003*.

The proposed Regulations would commence the day after registration on the Federal Register of Legislation.

The Minute recommends that the Regulations be made in the form proposed.

Authority:
Section 395 of the *Commonwealth Electoral Act 1918*
Section 144 of the *Referendum (Machinery Provisions) Act 1984*
Section 16 of the *Electronic Transactions Act 1999*

s 22(1)(a)(ii)

[redacted]

ATTACHMENT

Details of the proposed *Electoral and Referendum Amendment (Miscellaneous Measures) Regulations 2021*

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the *Electoral and Referendum Amendment (Miscellaneous) Regulations 2021.*

Section 2 - Commencement

This section provides for the Regulations to commence the day after this instrument is registered.

Section 3 - Authority

This section provides that the Regulations are made under:

(a) the *Commonwealth Electoral Act 1918*;

(b) the *Referendum (Machinery Provisions) Act 1984*; and

(c) the *Electronic Transactions Act 1999.*

Section 4 – Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 - Amendments

***Electoral and Referendum Regulation 2016* (the Electoral Regulations)**

Items [1] – [3] – section 5

The Regulations amend section 5 'Definitions' of the Electoral Regulations to clarify the application and purpose of the amendments to extend the ***electronically assisted voting method*** to enable ***registered electronically assisted voters*** to vote electronically. Previously the ***electronically assisted voting method*** was only available to sight-impaired persons. The Regulations amends the definition of ***registered electronically assisted voter*** to extend to Antarctic electors and eligible unenrolled persons working in Antarctica, who meet the respective prescribed registration requirements.

The Miscellaneous Measures Act amended subsection 4(1) (Interpretation) of the Electoral Act to include definitions of ***Antarctica*** and ***Antarctic elector***. The definition of ***sight-impaired person*** has the meaning given by Part XVB (Electronically assisted voting) section 202AA (Definitions) of the Electoral Act. Further, the definitions of ***electronically assisted vote*** and ***electronically assisted voting*** are provided in section 5 of the Electoral Regulations.

s 22(1)(a)(ii)

[redacted]

Item [1] – section 5

Item 1 amends the definition of ***electronically assisted voting method*** in section 5 to apply to a ***registered electronically assisted voter*** which is defined by **Item 2** of the Regulations.

Item [2] – section 5

Item 2 inserts the definition of ***registered electronically assisted voter*** in section 5 to clarify that a sight-impaired person or an Antarctic elector, who is registered with the Electoral Commissioner for the purpose of voting by an electronically assisted vote, is a ***registered electronically assisted voter***.

Items [3] – section 5

Item 3 repeals the definition of *registered sight-impaired voter* as **Item 2** inserts a new definition in section 5. The definition of ***registered electronically assisted voter*** includes sight-impaired persons and extends to include Antarctic electors, who are registered with the Electoral Commissioner for the purpose of voting by an electronically assisted vote.

Item [4] – part 4

Item 4 repeals Division 1A (Senate ballot paper (Form E)) from the Electoral Regulations. The Miscellaneous Measures Act inserts an updated Senate ballot paper (Form E) into Schedule 1 of the Electoral Act, rendering the Senate ballot paper in the Electoral Regulations redundant.

Item [5] – part 4

Item 5 amends the Part 4, Division 1 heading 'Electronically assisted voting' to omit reference to sight-impaired people to clarify the application of the Division is expanded.

Items [6] – [9] – section 15

Items 6 to 9 amend subsection 15(1), paragraph 15(2)(a) and (b), and the subsection 15(2) example to clarify that section 15 (Authorised call centres) is applicable to sight-impaired persons and Antarctic electors to register to vote by an electronically assisted vote, or cast an electronically assisted vote in an electoral event.

A sight-impaired person or an Antarctic elector is not a ***registered electronically assisted voter*** until the person is registered in accordance with section 16 (Registration) of the Electoral Regulations.

Items [10] – [14] – section 16

Items 10 to 14 amend paragraphs 16(1)(a) and 16(1)(b), and subsections 16(1)(note), 16(2), 16(3) and 16(4) to clarify that a sight-impaired person or an Antarctic elector may register as a ***registered electronically assisted voter*** under the prescribed process in section 16 (Registration).

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Items [15] – [18] – section 17

Items 15 to 18 amend subsections 17(1), paragraphs 17(2)(c) and (3)(b), and subparagraph 17(3)(i)(i) to clarify that section 17 is applicable to ***registered electronically assisted voters***, which includes both sight-impaired persons and Antarctic electors registered in accordance with section 16 (Registration).

Items [19] – [20] – section 18

Items 19 and 20 amend subsections 18(1) and (2) to clarify that the call centre operator must be satisfied that the person is a ***registered electronically assisted voter***, and the ***registered electronically assisted voter*** must be asked an appropriate question relevant to the electoral event occurring.

Items [21] – [23] – section 19

Item 21 amends the heading to 'Enabling registered electronically assisted voter to vote', to clarify ***registered electronically assisted voters*** are enabled to vote under the procedures prescribed in section 19 of the Electoral Regulations.

Item 22 amends subsections 19(1) and (2) to clarify application of section 19 to ***registered electronically assisted voters***, which includes both sight-impaired persons and Antarctic electors registered in accordance with section 16 (Registration).

Item [23] – section 24

Item 23 amends paragraphs 24(2)(d) and (3)(d) to clarify that ballot papers in federal electoral events will be subject to scrutiny with the modifications necessary to ensure that is irrelevant that the vote can be identified as being an electronically assisted vote cast by a sight-impaired person or Antarctic elector. This means the ballot is taken to be a pre-poll ordinary vote for the purposes of scrutiny (counting of ballots) in Part XVIII (The scrutiny) of the Electoral Act and Part VI (Scrutiny of a referendum) of the Referendum Act.

Item [24] – schedule 3

Item 24 repeals Schedule 3 to remove the Senate ballot paper (Form E) from the Regulations. The Senate ballot paper is replaced by the Miscellaneous Measures Act, which inserts an updated Senate ballot paper (Form E) into Schedule 1 of the Electoral Act, rendering the version of the Senate ballot paper in the Electoral Regulations redundant.

Electronic Transactions Regulations 2020 **(the Electronic Transactions Regulations)**

Items [25] – [27] – schedule 1

Items 25 and 26 amend table item 19 of the Electronic Transactions Regulations to remove reference to Part XVII of the Electoral Act which was repealed by the Miscellaneous Measures Act, rendering reference to the part redundant.

s 22(1)(a)(ii)

Item 27 amends table item 78 of the Electronic Transactions Regulations to remove reference to Part V of the Referendum Act which was repealed by the Miscellaneous Measures Act, rendering reference to the part redundant.

s 22(1)(a)(ii)

ASSISTANT TREASURER
MINISTER FOR FINANCIAL SERVICES

Departmental No. 257 of 2023

Executive Council Meeting No. 15

Minute Paper for the Executive Council

Subject

Superannuation Industry (Supervision) Regulations 1994

Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2023

Recommended for the approval of His Excellency the Governor-General in Council that he make Regulations in the attached form.

s 22(1)(a)(ii)

Stephen Jones
Assistant Treasurer
Minister for Financial Services

Approved in Council

s 22(1)(a)(ii)

David Hurley
Governor-General

3 August 2023

Filed in the Records of the Council

s 22(1)(a)(ii)

Secretary to the Executive Council

Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2023

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

s 22(1)(a)(ii)

Dated 3 August 2023

Governor-General

By His Excellency's Command

s 22(1)(a)(ii)

Stephen Jones
Assistant Treasurer
Minister for Financial Services

OPC66331 - A

Contents

1 Name

This instrument is the *Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2023*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under:

(a) the *Electronic Transactions Act 1999*; and

(b) the *Superannuation Industry (Supervision) Act 1993*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Main amendments

Superannuation Industry (Supervision) Regulations 1994

1 Regulation 9AB.1

Insert:

adjusted index has the meaning given by subregulation 9AB.5A(7).

2 Regulation 9AB.1 (definition of *asset allocation standard*)

Repeal the definition, substitute:

asset allocation standard means:

(a) the *Financial Sector (Collection of Data) (reporting standard) determination No. 42 of 2023*; or

(b) an analogous legislative instrument (whether or not the legislative instrument is in force).

3 Regulation 9AB.1

Insert:

assumed index has the meaning given by regulation 9AB.17.

currency exposure:

(a) of a standard Part 6A product in relation to a quarter, means the Part 6A product's currency exposure in relation to the quarter, as reported to APRA in accordance with the applicable asset allocation standard; and

(b) of a lifecycle Part 6A product in relation to a lifestage and a quarter, means the Part 6A product's currency exposure in relation to the lifestage and the quarter, as reported to APRA in accordance with the applicable asset allocation standard.

4 Regulation 9AB.1 (definition of *fees standard*)

Repeal the definition, substitute:

fees standard means:

(a) the *Financial Sector (Collection of Data) (reporting standard) determination No. 47 of 2023*; or

(b) an analogous legislative instrument (whether or not the legislative instrument is in force).

5 Regulation 9AB.1

Insert:

gross investment return net of fees:

(a) of a standard Part 6A product in relation to a quarter, means the Part 6A product's gross investment return net of fees in relation to the quarter, as reported to APRA in accordance with the applicable investment performance standard; and

(b) of a lifecycle Part 6A product in relation to a lifestage and a quarter, means the Part 6A product's gross investment return net of fees in relation to the lifestage and the quarter, as reported to APRA in accordance with the applicable investment performance standard.

hybrid platform TDP means a platform TDP that is offered through one or more investment menus of the generic type or the lifecycle option type (in addition to investment menus of the platform type), as reported to APRA in accordance with the applicable RSE structure standard.

IEH percentage, ***IEU percentage*** and ***IFI percentage*** have the meanings given by subregulation 9AB.5A(6).

index has the meaning given by regulation 9AB.5A.

initial quarter of a Part 6A product means the first quarter in relation to which the trustee of the superannuation entity that offers the Part 6A product reported to APRA, in accordance with the applicable investment performance standard, a net investment return or gross investment return net of fees of the Part 6A product.

investment pathway: if there is a choice of different ways of investing in a Part 6A product, as reported to APRA in accordance with the applicable RSE structure standard, each of those ways is an ***investment pathway*** of the Part 6A product.

investment pathway weight has the meaning given by subregulation 9AB.4A(9).

6 Regulation 9AB.1 (definition of *investment performance standard*)

Repeal the definition, substitute:

investment performance standard means:

(a) the *Financial Sector (Collection of Data) (reporting standard) determination No. 45 of 2023*; or

(b) the *Financial Sector (Collection of Data) (reporting standard) determination No. 46 of 2023*; or

(c) an analogous legislative instrument (whether or not the legislative instrument is in force).

7 Regulation 9AB.1

Insert:

platform TDP means a trustee-directed product that is offered through one or more investment menus of the platform type, as reported to APRA in accordance with the applicable RSE structure standard.

8 Regulation 9AB.1 (definition of *representative administration fees and expenses* or *RAFE*)

Repeal the definition, substitute:

representative administration fees and expenses or ***RAFE*** has the meaning given by regulation 9AB.4A.

9 Regulation 9AB.1

Insert:

RSE structure standard means:

(a) the *Financial Sector (Collection of Data) (reporting standard) determination No. 43 of 2023*; or

(b) the *Financial Sector (Collection of Data) (reporting standard) determination No. 44 of 2023*; or

(c) an analogous legislative instrument (whether or not the legislative instrument is in force).

standard fees and costs arrangement, of a Part 6A product in relation to a period, means the Part 6A product's standard fees and costs arrangement in relation to the period, as reported to APRA in accordance with the applicable investment performance standard and applicable RSE structure standard.

standard platform TDP means a platform TDP that is not a hybrid platform TDP.

transaction costs cap, of a Part 6A product in relation to a financial year, means the Part 6A product's fee cap (for the transaction costs type of fee) in relation to the end of the financial year, as reported to APRA in accordance with the applicable fees standard.

transaction costs flat amount, of a Part 6A product in relation to a financial year, means the Part 6A product's dollar amount (for the transaction costs type of fee) in relation to the end of the financial year, as reported to APRA in accordance with the applicable fees standard.

transaction costs percentage, of a Part 6A product in relation to a financial year, means the Part 6A product's percentage of member balance (for the transaction costs type of fee) in relation to the end of the financial year, as reported to APRA in accordance with the applicable fees standard.

trustee-directed product has the meaning given by regulation 9AB.2.

10 Subregulation 9AB.2(1)

Repeal the subregulation, substitute:

(1) For the purposes of paragraph 60B(b) of the Act, trustee-directed products are identified as a class of beneficial interest in a regulated superannuation fund.

11 Paragraph 9AB.2(2)(a)

Repeal the paragraph, substitute:

(a) at least one of the beneficial interests in the class is *not* a superannuation interest (within the meaning of the 1997 Tax Act) that supports a superannuation income stream that is in the retirement phase; and

12 Subregulation 9AB.2(3)

Omit "Part 6A product", substitute "standard Part 6A product".

13 After subregulation 9AB.2(4)

Insert:

(4A) Despite subregulation (4), for the purposes of subparagraph (2)(b)(i), treat the covered asset classes for a quarter listed in each of the following paragraphs as each being one covered asset class for the quarter:

(a) the covered asset classes identified in items 2, 3, 4, 5, 6 and 7 of the table in regulation 9AB.17;

(b) the covered asset classes identified in items 16, 17 and 18 of that table;

(c) the covered asset classes identified in items 19, 20 and 21 of that table;

(d) the covered asset classes identified in items 24, 25 and 26 of that table.

14 Subregulation 9AB.3(5)

Repeal the subregulation, substitute:

(5) For the purposes of subparagraph (3)(b)(ii), if the previous quarter is before the Part 6A product's initial quarter, treat the reference in that subparagraph to the previous quarter as being a reference to the initial quarter.

15 Subregulation 9AB.4(2)

Repeal the subregulation, substitute:

(2) For the purposes of subregulation (1), if the previous quarter is before the Part 6A product's initial quarter, treat the references in subregulation (1) to the previous quarter as being references to the initial quarter.

16 After regulation 9AB.4

Insert:

9AB.4A Meaning of *representative administration fees and expenses* or *RAFE*

(1) ***Representative administration fees and expenses*** or ***RAFE***, for a Part 6A product in relation to a period, means the sum of the following:

(a) the Part 6A product's administration fees and costs, and related tax expenses and benefits, in relation to the period under the Part 6A product's standard fees and costs arrangement in relation to the period as reported to APRA in accordance with the applicable investment performance standard and applicable RSE structure standard;

(b) the Part 6A product's advice fees and costs, and related tax expenses and benefits, in relation to the period under that standard fees and costs arrangement.

(2) In working out an amount for the purposes of paragraph (1)(a) or (b), assume that the amount related to a beneficiary of the entity offering the Part 6A product with an account balance in respect of the Part 6A product throughout the period of:

(a) if paragraph (b) does not apply—$50,000;

(b) if there is a minimum balance requirement to access the Part 6A product that is greater than $50,000—that minimum balance.

Lifecycle Part 6A products

(3) Subregulations (4) to (6) apply if the Part 6A product is a lifecycle Part 6A product.

(4) Despite subregulation (1), work out the ***representative administration fees and expenses*** or ***RAFE*** for the Part 6A product in relation to a period as follows:
   (a) first, work out each RAFE for the Part 6A product in relation to the period, in accordance with subregulation (1), on the assumptions that:
      (i) subregulation (1) applies separately in respect of each lifestage of the Part 6A product; and
      (ii) in applying subregulation (1) to a lifestage, references in that subregulation to amounts reported to APRA were references to such amounts to the extent that they relate to that lifestage;
   (b) next, identify the largest of the RAFEs worked out under paragraph (a).

(5) Subregulation (6) applies if:
   (a) the lifecycle Part 6A product has particular lifestages at the start of a financial year; and
   (b) at one or more times during the year, the product starts to have different lifestages.

(6) Despite subregulations (1) and (4), work out the RAFE for the Part 6A product in relation to the year as follows:
   (a) first, divide the year into periods on the following basis:
      (i) the first period starts at the start of the year;
      (ii) a new period starts each time the product starts to have different lifestages;
      (iii) the last period ends at the end of the year;

      Note: Each period, other than the last period, ends immediately before the first time after the start of that period at which there is a change of the lifestages.
   (b) next, work out the RAFE for the Part 6A product in relation to each period identified under paragraph (a), in accordance with subregulation (4);
   (c) next, work out the sum of the RAFEs worked out under paragraph (b).

Trustee-directed products

(7) Subregulations (8) and (9) apply if the Part 6A product is a trustee-directed product.

(8) Despite subregulations (1) to (6), work out the ***representative administration fees and expenses*** or ***RAFE*** for the Part 6A product in relation to a period as follows:
   (a) first, work out each RAFE for the Part 6A product in relation to each quarter in the period, in accordance with those subregulations, on the assumptions that:
      (i) those subregulations apply separately in respect of each investment pathway of the Part 6A product; and
      (ii) in applying those subregulations in respect of an investment pathway, references in those subregulations to amounts reported to APRA were references to such amounts to the extent that they relate to that investment pathway;
   (b) next, multiply each RAFE identified under paragraph (a) in relation to a quarter and an investment pathway by the investment pathway weight for the investment pathway for the quarter (see subregulation (9));
   (c) next, work out the sum of the results of paragraph (b).

(9) The ***investment pathway weight*** of a Part 6A product for an investment pathway for a quarter is:

(a) the market value at the end of the quarter of all member assets supporting the Part 6A product that are referable to the investment pathway;

divided by:

(b) the market value at the end of the quarter of all member assets supporting the Part 6A product that are referable to an investment pathway of the Part 6A product.

17 Subregulations 9AB.5(1) to (3)

Repeal the subregulations, substitute:

(1) A Part 6A product's ***strategic asset allocation*** in relation to a quarter to a covered asset class for the quarter is:

(a) unless paragraph (b) or (c) applies—the Part 6A product's benchmark asset allocation in relation to the quarter to the covered asset class, as reported to APRA in accordance with the applicable asset allocation standard (expressed as a fraction); or

(b) unless paragraph (c) applies, if the Part 6A product does not have a benchmark asset allocation in relation to the quarter to the covered asset class—zero; or

(c) if the quarter is before the Part 6A product's initial quarter—the product's benchmark asset allocation in relation to the initial quarter to the covered asset class (expressed as a fraction).

(2) For the purposes of subregulation (1), if a benchmark asset allocation to a covered asset class does not identify an asset domicile type for the covered asset class:

(a) treat half of the amount of that benchmark asset allocation as identified with an Australian domicile type;

(b) treat half of the amount of that benchmark asset allocation as identified with an international domicile type; and

(c) where the benchmark asset allocation identifies a currency hedging ratio for the covered asset class (including a currency hedging ratio of zero)—treat all of the amount of that currency hedging ratio as identified with the international domicile type; and

(d) where the benchmark asset allocation does *not* identify a currency hedging ratio for the covered asset class:

(i) if the Part 6A product does *not* have a currency exposure in relation to the quarter—treat a currency hedging ratio of zero as identified with the international domicile type; or

(ii) if the Part 6A product has a currency exposure in relation to the quarter (including a currency exposure of zero)—treat a currency hedging ratio of the amount worked out under subregulation (3A) as identified with the international domicile type.

(3) For the purposes of subregulation (1), if a benchmark asset allocation to a covered asset class identifies the international domicile type with the covered asset class and does *not* identify a currency hedging ratio for the covered asset class:

(a) if the Part 6A product does *not* have a currency exposure in relation to the quarter—treat a currency hedging ratio of zero as identified with the international domicile type; or

(b) if the Part 6A product has a currency exposure in relation to the quarter (including a currency exposure of zero)—treat a currency hedging ratio of the amount worked out under subregulation (3A) as identified with the international domicile type.

(3A) For the purposes of subparagraph (2)(d)(ii) and paragraph (3)(b), work out the currency hedging ratio as follows:

(a) first, work out the Part 6A product's strategic asset allocation, in relation to the quarter, to each covered asset class identified with the international domicile type;

(b) next, work out the sum of the strategic asset allocations worked out under paragraph (a);

(c) next, divide the currency exposure mentioned in subparagraph (2)(d)(ii) and paragraph (3)(b) by the result of paragraph (b);

(d) next, subtract the result of paragraph (c) from one.

If the result of paragraph (d) is less than zero, treat it as being zero.

18 After subregulation 9AB.5(4)

Insert:

Lifecycle Part 6A products

(4A) Subregulation (4B) applies if the Part 6A product is a lifecycle Part 6A product.

(4B) Despite subregulations (1) to (4), work out the ***strategic asset allocation*** of a lifecycle Part 6A product in relation to a lifestage and a quarter to a covered asset class for the quarter on the assumptions that:

(a) those subregulations apply separately in respect of each lifestage of the Part 6A product; and

(b) in applying those subregulations to a lifestage, references in this regulation to amounts reported to APRA were references to such amounts to the extent that they relate to that lifestage.

19 Subregulation 9AB.5(5)

Omit "strategic asset allocation to a covered asset class in relation to a quarter", substitute "strategic asset allocation in relation to a quarter to a covered asset class for the quarter".

20 Subregulation 9AB.5(10)

Omit "covered asset class in relation to the quarter", substitute "covered asset class for the quarter".

21 At the end of regulation 9AB.5

Add:

Strategic asset allocations add up to less than 1

(11) Subregulation (12) applies if, in relation to a quarter, the sum of the strategic asset allocations of a standard Part 6A product in relation to the quarter, or a

lifecycle Part 6A product in relation to a lifestage and the quarter, to all covered asset classes for the quarter is less than 1.

(12) For the purposes of this regulation, treat the strategic asset allocation of the standard Part 6A product in relation to the quarter, or the lifecycle Part 6A product in relation to the lifestage and the quarter, to each covered asset class for the quarter as being reasonably adjusted such that the sum mentioned in subregulation (11) is 1.

22 After regulation 9AB.5

Insert:

9AB.5A Meaning of *index*

(1) ***Index***, of a covered asset class for a quarter, means the amount calculated using the following formula, rounded to 10 decimal places (rounding up if the eleventh decimal place is 5 or more):

$$\frac{\text{Value at the end of the quarter of the assumed index for the covered asset class}}{\text{Value at the end of the previous quarter of the assumed index for the covered asset class}} - 1$$

Note: For a covered asset class for a quarter that is identified in item 24, 25 or 26 of the table in regulation 9AB.17 (alternatives, defensive alternatives or growth alternatives asset class), see subregulations (4) to (7) of this regulation.

Late reporting of unlisted infrastructure indices

(2) Subregulation (3) applies in relation to a covered asset class for a quarter if:

(a) the covered asset class is identified in item 14 or 15 of the table in regulation 9AB.17; and

(b) the value at the end of the quarter of the assumed index for the covered asset class is not publicly available earlier than 36 days after the end of the financial year in which the quarter occurs.

(3) For the purposes of calculating the index of the covered asset class for the quarter:

(a) treat the value at the end of the quarter of the assumed index for the covered asset class as being the value at the end of the quarter of the assumed index for the covered asset class identified in item 10 of the table in regulation 9AB.17; and

(b) treat the value at the end of the previous quarter of the assumed index for the covered asset class as being the value at the end of the previous quarter of the assumed index for the covered asset class identified in item 10 of the table in regulation 9AB.17.

Index for alternatives, defensive alternatives and growth alternatives

(4) Subregulations (5), (6) and (7) apply in relation to a covered asset class for a quarter if the covered asset class is identified in item 24, 25 or 26 of the table in regulation 9AB.17.

(5) Despite subregulation (1), the index of the covered asset class for a quarter is the sum of the following:

(a) the covered asset class's IEH percentage (see subregulation (6)) of the adjusted index (see subregulation (7)) of the covered asset class identified in item 2 (International Equity (hedged)) of the table in regulation 9AB.17 for the quarter;

(b) the covered asset class's IEU percentage (see subregulation (6)) of the adjusted index (see subregulation (7)) of the covered asset class identified in item 5 (International Equity (unhedged)) of that table for the quarter;

(c) the covered asset class's IFI percentage (see subregulation (6)) of the adjusted index (see subregulation (7)) of the covered asset class identified in item 19 (International Fixed Interest) of that table for the quarter.

(6) The ***IEH percentage***, ***IEU percentage*** and ***IFI percentage*** of the covered asset class mentioned in subregulation (4) is that identified in the item of the following table that has the covered asset class item number and covered asset class description that corresponds to the covered asset class:

Component percentages for calculation of adjusted index for alternatives

Covered asset class item	Covered asset class description	IEH percentage	IEU percentage	IFI percentage
24	Alternatives	25%	25%	50%
25	Defensive alternatives	12.5%	12.5%	75%
26	Growth alternatives	37.5%	37.5%	25%

(7) For the purposes of paragraphs (5)(a), (b) and (c), work out the ***adjusted index*** of a covered asset class for a quarter using the following formula, rounded to 10 decimal places (rounding up if the eleventh decimal place is 5 or more):

$$\left[\frac{(1 + \text{Index})}{(1 + \text{Fee})^{\frac{1}{4}}} - 1\right] \times [1 - \text{ART}]$$

where:

ART means the assumed rate of tax for the quarter for the covered asset class.

fee means the assumed annual fee for the quarter for the covered asset class.

index means the index of the covered asset class for the quarter.

23 Subparagraph 9AB.6(1)(a)(i)

Omit "net return", substitute "net investment return or gross investment return net of fees".

24 Subparagraph 9AB.6(1)(a)(ii)

Repeal the subparagraph, substitute:

(ii) if the financial year is the 2020-21 financial year—the 1 July that is 6 years before 1 July in the financial year;

(iii) if the financial year is the 2021-22 financial year—the 1 July that is 7 years before 1 July in the financial year;

(iv) if the financial year is the 2022-23 financial year—the 1 July that is 8 years before 1 July in the financial year;

(v) if the financial year is the 2023-24 financial year or a later financial year—the 1 July that is 9 years before 1 July in the financial year; and

25 Subregulation 9AB.6(1) (note)

Repeal the note, substitute:

Note: The lookback period will be 10 financial years, unless subparagraph (a)(i), (ii), (iii) or (iv) applies.

26 Subparagraph 9AB.10(2)(a)(ii)

Omit "5", substitute "7".

27 At the end of regulation 9AB.10

Add:

Hybrid platform TDP

(9) Subregulation (10) applies if the Part 6A product mentioned in subregulation (1) is a hybrid platform TDP.

(10) In applying subregulation (2) in relation to the hybrid platform TDP:

(a) work out 2 performance measures for the hybrid platform TDP, as follows:

(i) assume that the hybrid platform TDP were 2 separate Part 6A products;

(ii) assume that one of those separate products was a standard platform TDP, and had the characteristics of the hybrid platform TDP relating to it being offered through investment menus of the platform type;

(iii) assume that the other of those separate products was a trustee-directed product that was not a platform TDP, and had the characteristics of the hybrid platform TDP relating to it being offered through investment menus of the generic type, the lifecycle option type, or both (as the case may be);

(iv) work out the performance measures for the 2 separate Part 6A products in accordance with subregulation (3); and

(b) treat subparagraph (2)(a)(i) as reading "both performance measures for the Part 6A product for the assessment year equal or exceed -0.005".

28 Subregulation 9AB.11(2)

Omit "rounded to 4 decimal places (rounding up if the fifth decimal place is 5 or more)", substitute "rounded to 10 decimal places (rounding up if the eleventh decimal place is 5 or more)".

29 Subregulation 9AB.11(2) (formula)

Repeal the formula, substitute:

$$\left[\prod_{t=1}^{4n}\left(1 + \text{Return}_t\right)\right]^{\frac{1}{n}} - 1$$

30 Subregulation 9AB.11(2) (definition of *NIR*)

Repeal the definition.

31 Subregulation 9AB.11(2)

Insert:

return, in relation to a quarter, means:

(a) if paragraph (b) does not apply—the Part 6A product's net investment return in relation to the quarter for the Part 6A product's standard fees and costs arrangement in relation to the quarter; or

(b) if it is *not* possible to identify the Part 6A product's net investment return in relation to the quarter from information available to APRA, but it is possible to identify the Part 6A product's gross investment return net of fees in relation to the quarter from information available to APRA—the Part 6A product's gross investment return net of fees in relation to the quarter for the Part 6A product's standard fees and costs arrangement in relation to the quarter.

32 At the end of regulation 9AB.11

Add:

Trustee-directed products

(3) Subregulation (4) applies if:

(a) the Part 6A product is a trustee-directed product; and

(b) at the end of a quarter in the lookback period, there are no member assets supporting the Part 6A product that are referable to any of the investment pathways of the Part 6A product.

(4) Treat the ***return*** (as defined in subregulation (2)), in relation to the quarter, as zero.

(5) Subregulation (6) applies if:

(a) the Part 6A product is a trustee-directed product that has 2 or more net investment returns or gross investment returns net of fees in relation to a quarter in the lookback period; and

(b) subregulation (4) does not apply in relation to the quarter.

(6) For the purposes of subregulation (2), treat the ***return*** (as defined in subregulation (2)), in relation to the quarter, as being the amount worked out under subregulation (7).

(7) For the purposes of subregulation (6), work out the amount as follows:

(a) first, work out a separate return (as defined in subregulation (2)) in relation to the quarter for each investment pathway of the Part 6A product, on the assumptions that:

(i) references in that definition to net investment return and gross investment return net of fees were references to such amounts to the extent that they relate to each investment pathway of the Part 6A product; and

(ii) references in that definition to the Part 6A product's standard fees and costs arrangement were references to each investment pathway's standard fees and costs arrangement;

(b) next, disregard any return worked out in accordance with paragraph (a) for an investment pathway of the Part 6A product, if there are no member assets supporting the Part 6A product that are referable to the investment pathway;

(c) next, identify the smallest of the returns worked out in accordance with paragraphs (a) and (b).

33 Subregulation 9AB.12(2)

Omit "rounded to 4 decimal places (rounding up if the fifth decimal place is 5 or more)", substitute "rounded to 10 decimal places (rounding up if the eleventh decimal place is 5 or more)".

34 Subregulation 9AB.12(2) (formula)

Repeal the formula, substitute:

$$\left(\prod_{t=1}^{4n}\left\{1+\sum_{j=1}^{J}\left[\text{Return}_{j,t}\times\left(\text{Lifestage weight}_{j,t}\right)\right]\right\}\right)^{\frac{1}{n}}-1$$

35 Subregulation 9AB.12(2) (definition of *NIR*)

Repeal the definition.

36 Subregulation 9AB.12(2)

Insert:

return, in relation to a quarter and a lifestage, means:

(a) if paragraph (b) does not apply—the Part 6A product's net investment return in relation to the quarter and the lifestage, for the Part 6A product's standard fees and costs arrangement in relation to the quarter; or

(b) if it is *not* possible to identify the Part 6A product's net investment return in relation to the quarter and the lifestage from information available to APRA, but it is possible to identify the Part 6A product's gross investment return net of fees in relation to the quarter and the lifestage from information available to APRA—the Part 6A product's gross investment return net of fees in relation to the quarter and the lifestage, for the Part 6A product's standard fees and costs arrangement in relation to the quarter.

37 Paragraph 9AB.12(3)(b)

Repeal the paragraph, substitute:

(b) either or both of the following apply:

(i) the Part 6A product and the quarters are in a class of Part 6A products and quarters specified in a determination under subregulation (4A);

(ii) the Part 6A product and the quarters are specified in a determination under subregulation (5).

38 Subregulation 9AB.12(4)

Repeal the subregulation, substitute:

(4) Despite subregulation (2), the ***actual return***, for the Part 6A product for the lookback period, is the amount calculated using the formula in subregulation (2), as modified in the way specified in the following determination:

(a) if only subparagraph (3)(b)(i) applies—the determination mentioned in that subparagraph;

(b) if only subparagraph (3)(b)(ii) applies—the determination mentioned in that subparagraph;

(c) if both subparagraphs (3)(b)(i) and (ii) apply—the determination mentioned in subparagraph (3)(b)(i).

(4A) For the purposes of subparagraph (3)(b)(i), APRA may, by legislative instrument, make a determination that:

(a) specifies classes of Part 6A products and quarters; and

(b) specifies modifications of the formula in subregulation (2) that APRA considers are reasonably necessary to reflect the circumstances mentioned in paragraph (3)(a) in respect of the specified classes of Part 6A products and quarters.

39 Subregulation 9AB.12(5)

Omit "paragraph (3)(b)", substitute "subparagraph (3)(b)(ii)".

40 At the end of paragraph 9AB.12(5)(b)

Add "in respect of the specified Part 6A product and quarters".

41 Subregulation 9AB.12(6)

Omit "the determination", substitute "a determination under subregulation (5)".

42 Subregulation 9AB.13(2)

Omit "rounded to 4 decimal places (rounding up if the fifth decimal place is 5 or more)", substitute "rounded to 10 decimal places (rounding up if the eleventh decimal place is 5 or more)".

43 Subregulation 9AB.13(2) (definition of *index*)

Repeal the definition, substitute:

index, in relation to a covered asset class and a quarter, means the index of the covered asset class for the quarter.

44 Subregulation 9AB.13(2) (definition of *SAA*)

Repeal the definition, substitute:

SAA, in relation to a covered asset class and a quarter, means the Part 6A product's strategic asset allocation in relation to the quarter to the covered asset class for the quarter.

45 Subregulations 9AB.13(3) to (7)

Repeal the subregulations, substitute:

Standard Part 6A products that report gross investment return net of fees

(3) Subregulation (4) applies in relation to a Part 6A product and a quarter if:

(a) it is *not* possible to identify the Part 6A product's net investment return in relation to the quarter from information available to APRA; but

(b) it is possible to identify the Part 6A product's gross investment return net of fees in relation to the quarter from information available to APRA.

(4) For the purposes of subregulation (2):

(a) treat ***ART***, in relation to a covered asset class and the quarter, as being zero; and

(b) in working out ***index*** in relation to a covered asset class identified in item 24, 25 or 26 of the table in regulation 9AB.17 and the quarter by applying subregulation 9AB.5A(7), treat ***ART*** in that subregulation as being zero.

Trustee-directed products

(5) Subregulation (6) applies in relation to a Part 6A product and a quarter if:

(a) the Part 6A product is a trustee-directed product; and

(b) at the end of the quarter, there are no member assets supporting the Part 6A product that are referable to any of the investment pathways of the Part 6A product.

(6) For the purposes of subregulation (2), treat ***fee*** and ***index***, in relation to all covered asset classes and the quarter, as being zero.

46 Subregulation 9AB.14(2)

Omit "rounded to 4 decimal places (rounding up if the fifth decimal place is 5 or more)", substitute "rounded to 10 decimal places (rounding up if the eleventh decimal place is 5 or more)".

47 Subregulation 9AB.14(2) (definition of *index*)

Repeal the definition, substitute:

index, in relation to a covered asset class and a quarter, means the index of the covered asset class for the quarter.

48 Subregulation 9AB.14(2) (definition of *SAA*)

Repeal the definition, substitute:

SAA, in relation to a covered asset class, a lifestage and a quarter, means the Part 6A product's strategic asset allocation in relation to the lifestage and the quarter to the covered asset class for the quarter.

49 Subregulations 9AB.14(3) to (7)

Repeal the subregulations, substitute:

Lifecycle Part 6A products that report gross investment return net of fees

(3) Subregulation (4) applies in relation to a lifestage and a quarter if:

(a) it is *not* possible to identify the Part 6A product's net investment return in relation to the lifestage and the quarter from information available to APRA; but

(b) it is possible to identify the Part 6A product's gross investment return net of fees in relation to the lifestage and the quarter from information available to APRA.

(4) For the purposes of subregulation (2):

(a) treat ***ART***, in relation to a covered asset class and the quarter, as being zero; and

(b) in working out ***index*** in relation to a covered asset class identified in item 24, 25 or 26 of the table in regulation 9AB.17 and the quarter by applying subregulation 9AB.5A(7), treat ***ART*** in that subregulation as being zero.

50 Paragraph 9AB.14(8)(b)

Repeal the paragraph, substitute:

(b) either or both of the following apply:

(i) the Part 6A product and the quarters are in a class of Part 6A products and quarters specified in a determination under subregulation (9A);

(ii) the Part 6A product and the quarters are specified in a determination under subregulation (10).

51 Subregulation 9AB.14(9)

Repeal the subregulation, substitute:

(9) Despite subregulation (2), the ***benchmark return***, for the Part 6A product for the lookback period for the product in respect of the year, is the amount calculated using the formula in subregulation (2), as modified in the way specified in the following determination:

(a) if only subparagraph (8)(b)(i) applies—the determination mentioned in that subparagraph;

(a) if only subparagraph (8)(b)(ii) applies—the determination mentioned in that subparagraph;

(b) if both subparagraphs (8)(b)(i) and (ii) apply—the determination mentioned in subparagraph (8)(b)(i).

(9A) For the purposes of subparagraph (8)(b)(i), APRA may, by legislative instrument, make a determination that:

(a) specifies classes of Part 6A products and quarters; and

(b) specifies modifications of the formula in subregulation (2) that APRA considers are reasonably necessary to reflect the circumstances mentioned in paragraph (8)(a) in respect of the specified classes of Part 6A products and quarters.

52 Subregulation 9AB.14(10)

Omit "paragraph (8)(b)", substitute "subparagraph (8)(b)(ii)".

53 At the end of paragraph 9AB.14(10)(b)

Add "in respect of the specified Part 6A product and quarters".

54 Subregulation 9AB.14(11)

Omit "the determination", substitute "a determination under subregulation (10)".

55 Subregulation 9AB.16(2)(b)

Repeal the paragraph, substitute:

(b) if the Part 6A product is not a MySuper product and is a platform TDP—identify all Part 6A products that exist at the end of the year that are not MySuper products and are platform TDPs; or

(c) if the Part 6A product is not a MySuper product and is not a platform TDP—identify all Part 6A products that exist at the end of the year that are not MySuper products and are not platform TDPs.

56 After subregulation 9AB.16(2)

Insert:

(2A) However, do not include a Part 6A product in the identification under subregulation (2) in relation to the year if the Part 6A product's initial quarter starts on a day during the financial year that is not 1 July.

57 Subregulations 9AB.16(7) and (8)

Repeal the subregulations.

58 Subregulation 9AB.17(3)

Omit "***Other/Commodities***", substitute "***Alternatives***".

59 Subregulation 9AB.17(7) (table)

Repeal the table, substitute:

Covered asset classes, assumed indices, assumed annual fees and assumed tax rates for quarters starting on or after 1 July 2014

Item	Description	Assumed index	Assumed annual fee	Assumed annual rate of tax
1	Australian Equity	ASA52 S&P/ASX 300 Total Return Index	0.05%	0.00%
2	International Equity (hedged; international economy type not specified or not applicable)	DE725341 MSCI All Country World Ex-Australia Equities Index with Special Tax (100% hedged to AUD)	0.11%	14.00%
3	International Equity (hedged; emerging markets)	DA725342 MSCI Emerging Markets with Special Tax (100% hedged to AUD)	0.16%	14.00%

Covered asset classes, assumed indices, assumed annual fees and assumed tax rates for quarters starting on or after 1 July 2014				
Item	**Description**	**Assumed index**	**Assumed annual fee**	**Assumed annual rate of tax**
4	International Equity (hedged; developed markets)	DA750700 MSCI World ex Australia with Special Tax (100% hedged to AUD)	0.10%	14.00%
5	International Equity (unhedged; international economy type not specified or not applicable)	DN714533 MSCI All Country World Ex-Australia Equities Index with Special Tax (unhedged in AUD)	0.09%	14.00%
6	International Equity (unhedged; emerging markets)	NA714531 MSCI Emerging Markets with Special Tax (unhedged in AUD)	0.14%	14.00%
7	International Equity (unhedged; developed markets)	NA714532 MSCI World ex Australia with Special Tax (unhedged in AUD)	0.08%	14.00%
8	Australian Listed Property	ASA6PROP S&P/ASX 300 A-REIT Total Return Index	0.12%	14.00%
9	International Listed Property	RAHRSAH FTSE EPRA Nareit Developed ex Aus Rental 100% Hedged to AUD Net Tax (Super) Index	0.22%	14.00%
10	Australian Listed Infrastructure	FDCICSAH FTSE Developed Core Infrastructure 50/50 100% Hedged to AUD Net Tax (Super) Index	0.26%	14.00%
11	International Listed Infrastructure	FDCICSAH FTSE Developed Core Infrastructure 50/50 100% Hedged to AUD Net Tax (Super) Index	0.26%	14.00%
12	Australian Unlisted Property	MSCI/Mercer Australia Core Wholesale Monthly Property Fund Index – NAV-Weighted Post-Fee Total Return (All Funds)	0%	14.00%
13	International Unlisted Property	MSCI Global (Excl. Pan-Europe and Pan-Asia Funds) Quarterly Property Fund Index (Unfrozen) (Net Total Return; AUD fixed)	0%	14.00%
14	Australian Unlisted Infrastructure	MSCI Australia Quarterly Private Infrastructure Fund Index (Unfrozen) – 50th Percentile Post-Fee Total Return (All Funds)	0%	14.00%
15	International Unlisted Infrastructure	MSCI Australia Quarterly Private Infrastructure Fund Index (Unfrozen) – 50th Percentile Post-Fee Total Return	0%	14.00%

Covered asset classes, assumed indices, assumed annual fees and assumed tax rates for quarters starting on or after 1 July 2014				
Item	**Description**	**Assumed index**	**Assumed annual fee**	**Assumed annual rate of tax**
		(All Funds)		
16	Australian Fixed Income	BACM0 Bloomberg Ausbond Composite 0+ Yr Index	0.10%	15.00%
17	Australian Fixed Income Excluding Credit	BAGV0 Bloomberg Ausbond Govt 0+ Yr Index	0.08%	15.00%
18	Australian Credit	BACR0 Bloomberg Ausbond Credit 0+ Yr Index	0.15%	15.00%
19	International Fixed Income	LEGATRAH Bloomberg Global Aggregate Index (hedged AUD)	0.10%	15.00%
20	International Fixed Income Excluding Credit	BTSYTRAH Bloomberg Global Treasury Index (hedged AUD)	0.08%	15.00%
21	International Credit	LGCPTRAH Bloomberg Global Aggregate Corporate Index (hedged AUD)	0.15%	15.00%
22	Australian Cash	BAUBIL Bloomberg Ausbond Bank Bill Index	0.04%	15.00%
23	International Cash	BAUBIL Bloomberg Ausbond Bank Bill Index	0.04%	15.00%
24	Alternatives		0%	0%
25	Defensive Alternatives		0%	0%
26	Growth Alternatives		0%	0%

60 Regulation 9AB.23 (subparagraph (a)(i) of the definition of *test period*)

Omit "8", substitute "10".

61 Subregulation 9AB.24(1) (formula)

Repeal the formula, substitute:

$$\text{Applicable investment fee} + \text{Applicable administration fee} + \text{Applicable cost amount}$$

62 Subregulation 9AB.24(1)

Insert:

applicable cost amount means:

(a) where it is possible to identify the Part 6A product's applicable transaction costs in relation to the relevant year from information available to APRA—means the applicable transaction costs; or

(b) otherwise—means the applicable indirect cost ratio.

applicable transaction costs has the meaning given by subregulation (4).

63 Subparagraph 9AB.24(3)(d)(i)

Before "result", insert "the".

64 At the end of regulation 9AB.24

Add:

(4) For the purposes of subregulation (1), work out the ***applicable transaction costs*** as follows:

(a) first, work out the product of the following:

(i) an account balance in respect of the Part 6A product;

(ii) the Part 6A product's transaction costs percentage in relation to the relevant year;

(b) work out the sum of the following:

(i) the result of paragraph (a);

(ii) the Part 6A product's transaction costs flat amount in relation to the relevant year;

(c) if the Part 6A product does *not* have a transaction costs cap in relation to the relevant year, the ***applicable transaction costs*** is the result of paragraph (b);

(d) if the Part 6A product has a transaction costs cap in relation to the relevant year, the ***applicable transaction costs*** is the lesser of the following:

(i) the result of paragraph (b);

(ii) that transaction costs cap.

65 Subregulation 14.28(1)

Omit "(1) The amendments made by this Schedule", substitute "The amendments made by Schedule 1 to the *Treasury Laws Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2021*".

66 Subregulation 14.28(2)

Repeal the subregulation.

67 In the appropriate position in Part 14

Insert:

Division 14.34—Transitional arrangements arising out of the Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2023

14.36 Arrangements

(1) The amendments made by Schedule 1 to the *Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2023* apply on and after 1 July 2023.

(2) If the assessment year mentioned in subparagraph 9AB.10(2)(a)(ii) is the 2022-23 financial year, treat the reference in that subparagraph to 7 as instead being a reference to 6.

(3) If the financial year mentioned in the definition of test period in regulation 9AB.23 is the 2022-23 financial year, treat the reference in that definition to 10 as instead being a reference to 9.

68 Schedule 2A

Repeal the Schedule, substitute:

Schedule 2A—Information in notice under subsection 60E(2) of Act

Note: See subregulation 9AB.19(2).

[Use the following template if: the Part 6A product is a MySuper product]

Dear *[insert the name of the beneficiary of the superannuation entity]*,

[If the conditions in subsection 60F(1) of the Act (2 consecutive fail assessments) are not satisfied, include the following paragraph]

Your superannuation product *[insert the name of the superannuation entity and the name of the Part 6A product]* has failed the annual performance test. You should think about moving your money to a different super fund.

[If the conditions in subsection 60F(1) of the Act (2 consecutive fail assessments) are satisfied, include the following paragraph]

Your superannuation product *[insert the name of the superannuation entity and the name of the Part 6A product]* has failed the annual performance test at least 2 years in a row. We are now banned from accepting new members into this product until it passes a future test. You should think about moving your money to a different super fund.

The Australian Government tests your super fund's products every year to make sure your savings are well managed for when you retire. Funds that fail this test are required by law to tell you.

[If the beneficiary holds only one investment option offered by the superannuation entity, include the following two paragraphs]

You had $*[insert the beneficiary's account balance for the Part 6A product as at 30 June in the calendar year in which the date of this letter falls]* invested with *[insert the name of the superannuation entity and the name of the Part 6A product]* on 30 June *[insert the calendar year in which the date of this letter falls]* and paid a total of $*[insert total fees and costs charged to the beneficiary in the relevant financial year, excluding insurance fees]* in fees in the last financial year.

Your money will stay in *[insert the name of the superannuation entity and the name of the Part 6A product]* unless you move it. Switching super funds is easy and there are no exit fees.

[If the beneficiary holds more than one investment option offered by the superannuation entity, include the following two paragraphs]

You had $*[insert the beneficiary's total account balance for all investment options offered by the superannuation entity as at 30 June in the calendar year in which the date of this letter falls]* invested with *[insert the name of the superannuation entity]* on 30 June *[insert the calendar year in which the date of this letter falls]*, of which $*[insert the beneficiary's account balance for the Part 6A product as at 30 June in the calendar year in which the date of this letter falls]* was invested in *[insert the name of the Part 6A product]*. Last financial year you paid a total of $*[insert total fees and costs charged to the beneficiary in the relevant financial year, excluding insurance fees]* in fees to *[insert the name of the superannuation entity]*.

Your money will stay in *[insert the name of the superannuation entity and the name of the Part 6A product]* unless you move it. Switching super funds is easy and there are no exit fees.

You could save thousands of dollars more for when you retire by switching to a better super fund. Super is a long-term investment. By earning 1% more each year for 30 years, you could retire with 20% more in savings; for example, your super could increase from $100,000 to $120,000.

Finding a better super fund is easy with the Australian Government's YourSuper comparison tool. You can use the tool to compare the fees and earnings of all simple, low-cost MySuper products. Go to *ato.gov.au/yoursuper* or use the QR code below:

[insert QR code for ato.gov.au/yoursuper]

This letter does not take your personal situation into account. You should think about your investment plans and personal situation, including insurance, when switching.

When you have opened a new super account, contact the new fund or use myGov to move your money over.

Your questions answered

What is the annual performance test?

The annual government test checks how much your super product has earned (after costs) over the last *[insert the number of financial years in the lookback period for the Part 6A product in respect of the relevant financial year]* financial years. It compares your product's earnings with those of a similar product over the same period.

Super funds with products that fail this test are required to tell you.

You can find out more about super at *moneysmart.gov.au*.

How do I move to a new super fund?

The first step is to find a new super fund. You should think about your investment plans and personal situation, including insurance, when switching.

You may find it helpful to use the Australian Government's YourSuper comparison tool. You can use the tool to compare the fees and earnings of simple, low-cost *MySuper products*. Go to *ato.gov.au/yoursuper* or use the QR code above.

Once you have chosen a new super fund, contact the new fund to open a new account.

After opening a new account, move your money from your existing one. You can contact the new fund or use myGov to do this. Find out more at *moneysmart.gov.au*

What happens if a super product fails two or more years in a row?

If a super product fails the test at least two years in a row, it cannot accept new members until it passes a future test. You should think about the impact of this on the product's ability to improve.

Your money will stay in the failed super product unless you move it.

[Use the following template if: one or more Part 6A products are a trustee-directed product, the beneficiary accessed the product via a generic or lifecycle investment menu, and the conditions in subsection 60F(1) of the Act (2 consecutive fail assessments) are not satisfied for these products]

Dear *[insert the name of the beneficiary of the superannuation entity]*,

[If the beneficiary holds only one failed Part 6A product offered by the superannuation entity, include the following paragraph]

Your superannuation investment option *[insert the name of the superannuation entity and the name of the Part 6A product]* has failed the annual performance test. You should think about moving your money to a different super investment option or fund.

[If the beneficiary holds more than one failed Part 6A product offered by the superannuation entity, include the following paragraph]

You have multiple superannuation investment options in *[insert the name of the superannuation entity]* that have failed the annual performance test. You should think about moving your money to a different super investment option or fund.

The Australian Government tests your super fund's investment options every year to make sure your savings are well managed for when you retire. Funds that fail this test are required by law to tell you.

You had $*[insert the beneficiary's total account balance for all investment options offered by the superannuation entity as at 30 June in the calendar year in which the date of this letter falls]* invested in *[insert the name of the superannuation entity]* on 30 June *[insert the calendar year in which the date of this letter falls]* and paid a total of $*[insert total fees and costs charged to the beneficiary in the relevant financial year, excluding insurance fees]* in fees in the last financial year. You had the following amount invested in failing investment options: *[insert a bullet list with the name of each failed Part 6A product, followed by the beneficiary's account balance for that Part 6A product as at 30 June in the calendar year in which the date of this letter falls, in parentheses]*

[If the bullet list above has one failed Part 6A product, include the following paragraph]

Your money will stay in this failing investment option in *[insert the name of the superannuation entity]* unless you move it.

[If the bullet list above has more than one failed Part 6A product, include the following paragraph]

Your money will stay in these failing investment options in *[insert the name of the superannuation entity]* unless you move it.

Finding a better super investment option could be worthwhile for your future. You could save thousands of dollars more for when you retire by switching to a better investment option or super fund. Super is a long-term investment. By earning 1% more each year for 30 years, you could retire with 20% more in savings; for example, your super could increase from $100,000 to $120,000.

You may find it helpful to use the Australian Government's YourSuper comparison tool. You can use the tool to compare the fees and earnings of simple, low-cost *MySuper investment options*. Note that the investment options listed above are *not* MySuper investment options. You should think about whether a MySuper investment option is right for you. Go to *ato.gov.au/yoursuper* or use the QR code below:

[insert QR code for ato.gov.au/yoursuper]

This letter does not take your personal situation into account. Before switching investment options, you should think about your investment plans and personal situation, such as investment goals and values, as well as insurance, fee and tax impacts. You may wish to speak to a financial adviser about your personal circumstances if you are unsure.

Your questions answered

What is the annual performance test?

The annual government test checks how much your super investment option has earned (after costs) over time. It compares your investment option's earnings with those of a similar investment option over the same period. The test is done at the investment option level. There may be a range of fees associated with an investment option. The test does not account for your personal situation, fees or tax.

Super funds with investment options that fail this test are required to tell you.

You can find out more about super at *moneysmart.gov.au*.

What things should I consider when deciding to switch super investment options or funds?

The performance test does not take into account your individual circumstances. You should think about your investment plans and personal situation, such as investment goals and values, as well as insurance, fees and tax impacts, when switching. You may wish to speak to a financial adviser about your personal circumstances.

How can I find a new super investment option or fund?

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How do I consolidate my super?

If you open an account with a new super fund, contact the new fund or use myGov to consolidate your money, saving on fees by avoiding charges on multiple accounts.

What happens if a super investment option fails two or more years in a row?

If a super investment option fails the test at least two years in a row, it cannot accept new members until it passes a future test. You should think about the impact of this on the investment option's ability to improve.

Your money will stay in the failed super investment option unless you move it.

[Use the following template if: one or more Part 6A products are a trustee-directed product, the beneficiary accessed the product via a generic or lifecycle investment menu, and the conditions in subsection 60F(1) of the Act (2 consecutive fail assessments) are satisfied for these products]

Dear *[insert the name of the beneficiary of the superannuation entity]*,

[If the beneficiary holds only one failed Part 6A product offered by the superannuation entity, include the following paragraph]

Your superannuation investment option *[insert the name of the superannuation entity and the name of the Part 6A product]* has failed the annual performance test at least 2 years in a row. We are now banned from accepting new members into this investment option until it passes a future test. You should think about moving your money to a different super investment option or fund.

[If the beneficiary holds more than one failed Part 6A product offered by the superannuation entity, include the following paragraph]

You have multiple superannuation investment options in *[insert the name of the superannuation entity]* that have failed the annual performance test at least 2 years in a row. We are now banned from accepting new members into these investment options until they pass a future test. You should think about moving your money to a different super investment option or fund.

The Australian Government tests your super fund's investment options every year to make sure your savings are well managed for when you retire. Funds that fail this test are required by law to tell you.

You had $*[insert the beneficiary's total account balance for all investment options offered by the superannuation entity as at 30 June in the calendar year in which the date of this letter falls]* invested in *[insert the name of the superannuation entity]* on 30 June *[insert the calendar year in which the date of this letter falls]* and paid a total of $*[insert total fees and costs charged to the beneficiary in the relevant financial year, excluding insurance fees]* in fees in the last financial year. You had the following amount invested in failing investment options: *[insert a bullet list with the name of each failed Part 6A product, followed by the beneficiary's account balance for that Part 6A product as at 30 June in the calendar year in which the date of this letter falls, in parentheses]*

[If the bullet list above has one failed Part 6A product, include the following paragraph]

Your money will stay in this failing investment option in *[insert the name of the superannuation entity]* unless you move it.

[If the bullet list above has more than one failed Part 6A product, include the following paragraph]

Your money will stay in these failing investment options in *[insert the name of the superannuation entity]* unless you move it.

Finding a better super investment option could be worthwhile for your future. You could save thousands of dollars more for when you retire by switching to a better investment option or super fund. Super is a long-term investment. By earning 1% more each year for 30 years, you could retire with 20% more in savings; for example, your super could increase from $100,000 to $120,000.

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This letter does not take your personal situation into account. Before switching investment options, you should think about your investment plans and personal situation, such as investment goals and values, as well as insurance, fee and tax impacts. You may wish to speak to a financial adviser about your personal circumstances if you are unsure.

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The annual government test checks how much your super investment option has earned (after costs) over time. It compares your investment option's earnings with those of a similar investment option over the same period. The test is done at the investment option level. There may be a range of fees associated with an investment option. The test does not account for your personal situation, fees or tax.

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If you open an account with a new super fund, contact the new fund or use myGov to consolidate your money, saving on fees by avoiding charges on multiple accounts.

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If a super investment option fails the test at least two years in a row, it cannot accept new members until it passes a future test. You should think about the impact of this on the investment option's ability to improve.

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[Use the following template if: one or more Part 6A products are a trustee-directed product, the beneficiary accessed the product via a platform investment menu, and the conditions in subsection 60F(1) of the Act (2 consecutive fail assessments) are not satisfied for these products]

Dear *[insert the name of the beneficiary of the superannuation entity],*

[If the beneficiary holds only one failed Part 6A product offered by the superannuation entity, include the following paragraph]

Your superannuation investment option *[insert the name of the superannuation entity and the name of the Part 6A product]* has failed the annual performance test. You should think about moving your money to a different super investment option or fund.

[If the beneficiary holds more than one failed Part 6A product offered by the superannuation entity, include the following paragraph]

You have multiple superannuation investment options in *[insert the name of the superannuation entity]* that have failed the annual performance test. You should think about moving your money to a different super investment option or fund.

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[If the bullet list above has one failed Part 6A product, include the following paragraph]

Your money will stay in this failing investment option in *[insert the name of the superannuation entity]* unless you move it.

[If the bullet list above has more than one failed Part 6A product, include the following paragraph]

Your money will stay in these failing investment options in *[insert the name of the superannuation entity]* unless you move it.

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Dear *[insert the name of the beneficiary of the superannuation entity]*,

[If the beneficiary holds only one failed Part 6A product offered by the superannuation entity, include the following paragraph]

Your superannuation investment option *[insert the name of the superannuation entity and the name of the Part 6A product]* has failed the annual performance test at least 2 years in a row. We are now banned from accepting new members into this investment option until it passes a future test. You should think about moving your money to a different super investment option or fund.

[If the beneficiary holds more than one failed Part 6A product offered by the superannuation entity, include the following paragraph]

You have multiple superannuation investment options in *[insert the name of the superannuation entity]* that have failed the annual performance test at least 2 years in a row. We are now banned from accepting new members into these investment options until they pass a future test. You should think about moving your money to a different super investment option or fund.

The Australian Government tests your super fund's investment options every year to make sure your savings are well managed for when you retire. Funds that fail this test are required by law to tell you.

You had $*[insert the beneficiary's total account balance for all investment options offered by the superannuation entity as at 30 June in the calendar year in which the date of this letter falls]* invested in *[insert the name of the superannuation entity]* on 30 June *[insert the calendar year in which the date of this letter falls]* and paid a total of $*[insert total fees and costs charged to the beneficiary in the relevant financial year, excluding insurance fees]* in fees in the last financial year. You had the following amount invested in failing investment options: *[insert a bullet list with the name of each failed Part 6A product, followed by the beneficiary's account balance for that Part 6A product as at 30 June in the calendar year in which the date of this letter falls, in parentheses]*

[If the bullet list above has one failed Part 6A product, include the following paragraph]

Your money will stay in this failing investment option in *[insert the name of the superannuation entity]* unless you move it.

[If the bullet list above has more than one failed Part 6A product, include the following paragraph]

Your money will stay in these failing investment options in *[insert the name of the superannuation entity]* unless you move it.

Finding a better super investment option could be worthwhile for your future. You could save thousands of dollars more for when you retire by switching to a better investment option or super fund. Super is a long-term investment. By earning 1% more each year for 30 years, you could retire with 20% more in savings; for example, your super could increase from $100,000 to $120,000.

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Your questions answered

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The annual government test checks how much your super investment option has earned for you (after costs) over time. It compares your investment option's earnings with those of a similar investment option over the same period. The test is done at the investment option level. There may be a range of fees associated with an investment option. The test does not account for your personal situation, fees or tax.

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The performance test does not take into account your individual circumstances. You should think about your investment plans and personal situation, such as investment goals and values, as well as insurance, fees and tax impacts, when switching. You may wish to speak to a financial adviser about your personal circumstances.

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If a super investment option fails the test at least two years in a row, it cannot accept new members until it passes a future test. You should think about the impact of this on the investment option's ability to improve.

Your money will stay in the failed super investment option unless you move it.

Schedule 2—Amendments to the Electronic Transactions Regulations 2020

Electronic Transactions Regulations 2020

1 Clause 1 of Schedule 1 (cell at table item 89, column 1, after paragraph (f))

Insert:

(fa) subsections 60C(3) and (4);

2 Clause 1 of Schedule 1 (cell at table item 90, column 1, paragraph (c))

After "9.46A", insert "and subregulations 9AB.5(8), 9AB.7(6), 9AB.10(6) and (8), 9AB.12(6), 9AB.14(11) and 9AB.15(2)".

EXPLANATORY MEMORANDUM

Minute No. 257 of 2023 — Assistant Treasurer and Minister for Financial Services

Subject - *Superannuation Industry (Supervision) Act 1993*

Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2023

The proposed regulations would update the annual superannuation performance test for superannuation products to address recommendations identified in Treasury's review of Your Future, Your Super laws, and to ensure the performance test is fit-for-purpose.

The *Superannuation Industry (Supervision) Act 1993* (the SIS Act) governs the prudent management of superannuation funds and the supervision by the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC) and the Commissioner of Taxation.

Section 353 of the SIS Act provides that the Governor-General may make regulations prescribing matters required or permitted by the SIS Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the SIS Act.

The *Electronic Transactions Act 1999* (the Electronic Transactions Act) provides a regulatory framework that facilitates the use of electronic transactions. Section 16 of the Electronic Transactions Act provides that the Governor-General may make regulations prescribing all matters required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Electronic Transactions Act.

The purpose of *Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2023* (the proposed Regulations) would be to amend the *Superannuation Industry (Supervision) Regulations 1994* (the Principal Regulations) to support the implementation of the annual performance test for superannuation products. APRA conducts performance tests on superannuation products that compares their investment performance against a series of prescribed benchmarks, and the administration fees they charge against their peers. APRA publishes the names of superannuation products that fail the tests, to ensure that superannuation funds are accountable for underperformance.

In 2021 and 2022 the test applied to MySuper products. MySuper products are the default product that an employer will pay an employee's superannuation into unless the employee chooses a different option. From 2023, Choice products will also be tested. Choice products are not default products, and they are a type of superannuation product which offer a wider suite of investment options. Trustee-directed products are a subset of Choice-products that will be subject to the test.

s 22(1)(a)(ii)

[redacted]

The proposed amendments would address key issues raised in Treasury's review of Your Future, Your Super laws. Key issues raised in respect of the performance test were that the existing performance test could lead to short-term investment decisions and disincentivises investments in certain assets, both of which could lead to poor member outcomes. The amendments in Schedule 1 to the proposed Regulations:

- would amend the testing period, benchmarks and notification letter that form part of the annual performance test requirements.
- would amend the operation of the test for trustee-directed products, so that platform products are tested separately to non-platform products, and on a gross-of-taxation basis.
- would make minor technical updates to improve accuracy and clarity for the test, reduce the administrative burden for APRA and would ensure the test is fit-for-purpose when it is extended to trustee-directed products.
- would make minor and technical amendments to the YourSuper comparison tool to ensure that the tool reflects updated reporting standards.

The amendments in Schedule 1 to the proposed Regulations would apply on and after 1 July 2023. This is not a retrospective application. It means when the test is conducted by APRA in August 2023 it will test superannuation products that exist in August 2023 according to their performance data as at the end of the most recent financial year as is the case under the Principal Regulations.

The amendments in Schedule 2 to the proposed Regulations amend the *Electronic Transactions Regulations 2020* to allow APRA to give notifications to trustees in relation to the performance test by means of electronic communication (within the meaning given by the Electronic Transactions Act) such as email.

The amendments in Schedule 2 have been prepared in response to the extension of the test to trustee-directed products. Given the significant increase in the number of products tested, amendments are made to allow electronic communication which will reduce the administration burden for APRA and ensure that notifications are received by trustees in a timely manner.

The exposure draft Regulations and explanatory material were released for a four-week public consultation between 4 April and 2 May 2023. The feedback was supportive of a performance test with submissions received to amend some of the technical aspects. These were considered in finalising the proposed Regulations.

Details of the proposed Regulations are set out in the Attachment.

The SIS Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

The proposed Regulations would be a legislative instrument for the purposes of the *Legislation Act 2003*.

The proposed Regulations would commence on the day after they were registered on the Federal Register of Legislation.

The Minute recommends that the Regulations be made in the form proposed.

Authority: Section 353 of the *Superannuation Industry (Supervision) Act 1993*

s 22(1)(a)(ii)

[redacted]

ATTACHMENT

Details of the proposed *Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2023*

Section 1 - Name of Regulations

This section would provide that the title of the proposed Regulations is the *Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2023*.

Section 2 - Commencement

This section would provide for the Regulations to commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 - Authority

This section would provide that the *Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2023* (the proposed Regulations) are made under the *Superannuation Industry (Supervision) Act 1994*.

Section 4 - Schedule(s)

This section would provide that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Main Amendments to the *Superannuation Industry (Supervision) Regulations 1994*

Items [24], [25], [60] and [67] – subregulations 9AB.6 and 9AB.23 – 10 year lookback period

Items 24 and 25 would amend the Principal Regulations to extend the lookback period of the performance test from 8 to 10 years. This means the performance test would measure a Part 6A product's performance based on the past 10 years of the product's performance history. Item 67 would insert a transitional rule to ensure the 10-year lookback period will be applied on a transitional basis as new data becomes available, meaning the lookback period in 2023 would be 9 years, before increasing to 10 years from 2024. Extending the lookback period would be expected to sharpen the incentive of trustees to focus on long-term decision making and aligns with broader industry disclosures.

Item 60 is a consequential amendment that would ensure the test period for the comparison ranking aligns with the extended lookback period.

Items [26] and [67] – subregulations 9AB.10 and Division 14.32 – Products with 7 year minimum performance history are subject to the test

Item 26 would amend the Principal Regulations to extend the minimum period of performance history that a Part 6A product must have to be subject to the performance

s 22(1)(a)(ii)

test from 5 to 7 years. Item 67 would insert a transitional rule to ensure the 7-year minimum period would be applied on a transitional basis. For the 2023 test, Part 6A products with a minimum of 6 years would be tested, and for the 2024 and future years, products with a minimum of seven years would be tested. Extending the minimum performance history period would give funds more time to implement longer-term investment strategies on new products before being subject to the test. The minimum period would strike a balance between maximising coverage of the performance test and giving new products a chance to get established.

The amendments would not change ARPA's discretion under subregulation 9AB.10(4) of the Principal Regulations to determine that a Part 6A product with a performance history that is less than the minimum performance history is to be subject to the test.

Items 5, 14, 15, 17 and 56 – Meaning of initial quarter

Item 5 would insert a definition of 'initial quarter' for the purposes of the performance test. The purpose of the amendment would be to clarify the concept which is key to the operation of the test and is already in the Principal Regulations but not clearly defined. The initial quarter would means the first quarter in which a Part 6A product reports returns to APRA because the product has member assets. This would provide clarity as there can be superannuation products that meet the definition of a Part 6A product because they exist and are open to receive members but do not actually have any members yet.

Items 14, 15, 17 and 56 would make consequential amendments relating to the consolidation of the definition. The initial quarter is key to the meaning of a lifecycle Part 6A product, the calculation of SAA, and the identification of benchmark return.

Items [3] and [59] – subregulations 9AB.1 and 9AB.17 – Table of covered asset classes

Item 59 would update the table of covered asset classes with corresponding fee, tax and index assumptions under subregulation 9AB.17(7) of the Principal Regulations. The purpose of the amendment would be to improve the accuracy of the test, reduce the incentive for trustees to avoid certain investments, and would reflect the latest index names, while maintaining the integrity of the test.

The table would provide additional rows to disaggregate some covered asset classes which would be available to be used for the performance test as, under the new asset allocation standard, funds now have the choice to report more granular data. Disaggregated covered asset classes would be provided for:

- International Equity (hedged; emerging markets)
- International Equity (hedged; developed markets)
- International Equity (unhedged; emerging markets)
- International Equity (unhedged; developed markets)
- Australian Fixed Income Excluding Credit
- Australian Credit
- International Fixed Income Excluding Credit
- International Credit
- Defensive Alternatives
- Growth Alternatives

The assumed index would also be updated for the following covered asset classes:

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[redacted]

- International Unlisted Property would be updated to an index with a greater geographical allocation to international unlisted property assets.
- Australian and International Unlisted Infrastructure would be updated to a median version of the existing index to ensure that the benchmark remains representative of investments in these asset classes.
- Australian and International Listed Infrastructure would be updated to a version of the index that has a regional and sectoral allocation more representative of infrastructure investments.

Item 3 would clarify that assumed index has the meaning currently given in subregulation 9AB.17(7).

Items [9], [10], [11], [12] and [13] – subregulations 9AB.1 and 9AB.2 –Meaning of trustee-directed products

The annual performance test would apply for 'Part 6A products', which are defined in section 60B of the SIS Act to be a MySuper product, or a class of beneficial interest in a regulated superannuation fund, if that class is identified by regulations.

Regulation 9AB.2 of the Principal Regulations includes a class known as 'trustee-directed products'. APRA is required to conduct the first annual performance test for trustee-directed products by 31 August 2023.

Broadly, trustee-directed products are accumulation choice products with strategic asset allocations to more than one asset class where the trustee or a connected entity has involvement in the design or implementation of the investment strategy of the product.

Item 9 would insert a definition of 'trustee-directed product' into regulation 9AB.1 of the Principal Regulations (the definitions provision) and would define the term as having the meaning given by regulation 9AB.2. This definition would be necessary as the amendments made by the proposed Regulations means that the term 'trustee-directed product' would appear throughout Division 9AB of the Principal Regulations whereas in the Principal Regulations the term only appeared in regulation 9AB.2.

Item 10 would repeal subregulation 9AB.2(1) of the Principal Regulations and would substitute a revised subregulation to improve readability. The operation of the subregulation would be unchanged.

Item 11 would repeal paragraph 9AB.2(2)(a) of the Principal Regulations and would substitute a revised paragraph to clarify the class of beneficial interests that fall within the scope of a 'trustee directed product'. The intended operation of the subregulation would be unchanged. This would provide for the test to apply to products where at least one member is in the accumulation phase. As provided for under the Principal Regulations, superannuation interests that are supporting an income stream in the retirement phase would not be captured by the definition of trustee-directed product. For example, a product would be deemed to be a trustee-directed product if it has member assets supporting at least one member in the accumulation phase at the time the test is run.

Item 13 would provide rules to allow certain covered asset classes to be treated as one asset class for the purposes of working out whether a product is a trustee-directed product. This would ensure that if a certain covered asset class is disaggregated, the

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same underlying product is consistently tested regardless of how it is reported to APRA. Item 12 would make a minor amendment to correct a reference of "Part 6A product" to the more specific "standard Part 6A product".

Items [5], [7], [9], [27] and [55] – subregulations 9AB.1, 9AB.10 and 9AB.16 – Trustee directed products with multiple investment pathways

Trustee-directed products are offered to members through investment menus. A single trustee-directed product may be offered through one or more investment menus. There are three types of investment menus: generic, lifecycle option, and platform.

Item 7 would insert a definition of a 'platform TDP', which is a trustee-directed product that is offered through one or more investment menus of the platform type, as reported to APRA in accordance with the applicable RSE structure standard.
Items 5 and 9 would insert definitions which represent the variety of ways in which members can access 'platform TDPs'. Specifically, these sub-categories of platform TDPs are:

- a 'hybrid platform TDP' which would mean a platform TDP that is offered through one or more investment menus of the generic type or the lifecycle option type (in addition to its investment menus of the platform type), as reported to APRA in accordance with the applicable RSE structure standard; and
- a 'standard platform TDP' which would mean a platform TDP that is not a hybrid platform TDP.

In extending the performance test to trustee-directed products, the amendments would ensure products would be tested against other comparable products. This would mean, generally, trustee-directed products of the platform type would be tested against other trustee-directed products of the platform type, and trustee-directed products of the non-platform type (that is, those offered through generic and lifecycle option investment menus) would be tested against other trustee-directed products of the non-platform type. The purpose of the amendments would be to ensure the test operates fairly in its application to trustee-directed products which vary in their structures and consequently in administration fees and costs.

Item 27 would amend regulation 9AB.10 of the Principal Regulations to clarify how the performance test applies to hybrid TDPs. Where a trustee-directed product is offered through both platform and non-platform investment menus (that is, it is a hybrid platform TDP), that product would be separated into two notional products. One notional product would be based on its platform investment menu characteristics and the other would be based on its non-platform menu characteristics. The two notional products would be tested independently: the notional platform TDP tested against comparable trustee-directed products of the platform type, and the other tested against trustee-directed products of the non-platform type. For the overall product to pass the performance test, both notional products would need to pass their respective tests. This would mean if one of the two notional products has failed the performance test, then the Part 6A product has failed.

Item 55 would repeal paragraph 9AB.16(2)(b) of the Principal Regulations and would substitute paragraphs 9AB.16(2)(b) and (c) to ensure that a 'benchmark RAFE' may be accurately computed for all Part 6A products. As amended, subregulation 9AB.16(2) would ensure the 'benchmark RAFE' which is the median administration fee and expenses (as charged on a $50,000 balance) can be computed

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across a certain category of products where the category is: MySuper products, not MySuper products that are platform TDPs, and not MySuper products that are not platform TDPs. This would mean that when a hybrid platform TDP is separated into the two notional products, regulation 9AB.16 would allow two benchmark RAFEs to be computed and used in the separate tests.

Item [68] – Schedule 2A – Trustee notification to beneficiaries

Under section 60E of the SIS Act, trustees are required to notify beneficiaries if a Part 6A product fails the performance test. Subsection 60E(6) of the SIS Act states that the notice from the trustee that a product has failed the performance test must be in the form, and contain information of a kind, specified in regulations. Schedule 2A of the Principal Regulations sets out this form and information as template letters. It includes standard words explaining why the member has received the notice, and how poor performance of a superannuation investment option can negatively affect their retirement income.

Item 68 would repeal Schedule 2A to the Principal Regulations and would substitute a new Schedule 2A with new letter templates and instructions on when each should be used, as well as revised standard words. There would be five template letters that trustees may use depending on the type of Part 6A product and whether it has failed the performance test once or consecutive times:

- MySuper product
- Platform trustee-directed product with a single failure
- Platform trustee-directed product with consecutive failures
- Non-platform trustee-directed product with a single failure
- Non-platform trustee-directed product with consecutive failures.

If a beneficiary has more than one failed MySuper product offered by the trustee, the trustee would be expected to send a separate letter for each failed MySuper product to the beneficiary. If a beneficiary has more than one failed Part 6A product offered by the trustee, the trustee would have the option to send one consolidated letter within each of the non-MySuper categories above. For example, if a beneficiary has three platform trustee-directed products with a single failure (one consolidated letter) and four platform trustee-directed products with consecutive failures (one consolidated letter), the trustee would send two consolidated letters. In another example, if a beneficiary has one MySuper product with a single failure (one letter) and three non-platform trustee-directed products with a single failure (one consolidated letter), the trustee would send two letters.

The revised standard words would improve accessibility and effectiveness by using simpler language, and clearly explain what the result means for beneficiaries in different situations.

Items [5], [23], [29], [30], [31], [34], [35] and [36] – subregulations 9AB.1, 9AB.11 and 9AB.12 – Definition of 'return'

Under the Principal Regulations, the variable 'NIR' is used to calculate the actual return part of the performance measure of a Part 6A product (see the formulas in

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regulations 9AB.11 and 9AB.12). Amendments would clarify how the performance test is calculated in circumstances where trustees report 'net investment return' or 'gross investment return net of fees'. This would reflect the different methods trustees may report investment return under the investment performance standard. 'Net investment return' is adjusted for tax whereas 'gross investment return net of fees' is not. Item 29 and 34 would make a consequential change to update the variable NIR to 'Return' in the relevant formulas to reflect that the variable now takes into account the two different ways trustees may report their data about investment return.

Items 30 and 35 would repeal the definition of 'NIR' as the proposed Regulations update this variable to 'return' so a definition of 'NIR' would no longer be required.

Item 5 would insert a definition of 'gross investment return net of fees'. This would have the same meaning as in the investment performance standard.

Item 31 would amend subregulation 9AB.12(2) of the Principal Regulations to clarify that 'return' for a Part 6A product in relation to a quarter would mean:

- the Part 6A product's net investment return in relation to the quarter, or
- if it is not possible to identify the Part 6A product's net investment return in relation to the quarter from information available to APRA, but it is possible to identify the Part 6A product's gross investment return net of fees in relation to the quarter from information available to APRA, then 'return' means gross investment return net of fees in relation to the quarter.

This would ensure that for the purposes of calculating a 'return', APRA are able to use the data point that is reported to APRA in accordance with the applicable investment performance standard.

Item 36 would make a similar amendment to subregulation 9AB.12(2) of the Principal Regulations to clarify 'return' for lifecycle Part 6A products.

Item 23 would make a consequential amendments to update 'net return' which appears in subregulation 9AB.6(1) of the Principal Regulations to reflect that funds now report 'net investment return or gross investment return net of fees'.

Items [45] and [49] – Calculation of 'benchmark return' where gross investment return net of fees is reported

Item 45 would insert subregulations 9AB.13(3) and (4) to provide that where a standard Part 6A product reports gross investment return net of fees for the purposes of calculating benchmark return 'ART' (assumed rate of tax) is treated as zero and in working out 'index' in relation to the Alternatives asset classes which requires using the variable 'ART', ART is treated as zero. This ensures that benchmark return is not adjusted for taxes, as this is not necessary when the gross investment return net of fees is reported. Item 49 would insert subregulations 9AB.14(3) and (4) to provide the same rules for benchmark return for a lifecycle Part 6A product.

Items [32] and [45] – subregulation 9AB.11 and 9AB.13– ***Calculation of 'actual return' and 'benchmark return' where a trustee directed product has no member assets for a quarter***

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Item 32 inserts a rule for working out 'actual return' where a trustee-directed product has no member assets in any investment pathways in relation to a quarter. Subregulations 9AB.11(3) and (4) provide that where a trustee-directed product has no member assets in any investment pathways at the end of the quarter, the quarterly return will be treated as zero. Return will be taken to be zero for that quarter, whether the product reports a return of zero or not. Reporting a non-zero return where there are no member assets is likely due to a partial quarter of investment performance and therefore it is not appropriate to test it against a benchmark return over the full quarter.

Item 45 would insert rules for working out 'benchmark return' where a Part 6A product reports zero assets in relation to a quarter. Subregulations 9AB.13(5) and (6) would resolve this by taking benchmark return to be zero for quarters where there are no investment pathways for the Part 6A product that hold member assets for that quarter. In these circumstances, benchmark return would be zero. Benchmark return would be calculated as the sum of all quarters in 9AB.13(2). Therefore, for benchmark return to equal zero for a quarter where 9AB.13(5) applies, fee and index would be treated as zero in in the formula in 9AB.13(2).

Items [9] and [32]– subregulation 9AB.11 – Calculation of 'actual return' where a trustee-directed product has 2 or more net investment returns or gross investment returns net of fees

Item 32 would insert subregulations 9AB.11(5), (6) and (7) to provide rules for working out 'actual return' where a standard Part 6A product is a trustee-directed product that has two or more net investment returns in relation to at least one quarter in the lookback period. This would occur when the trustee-directed product has different net investment returns within an investment pathway or has multiple investment pathways.

The 'actual return' would be found by first identifying the actual return for each investment pathway based on the standard fees and costs arrangement for each investment pathway. Item 9 would inserts a definition for standard fees and costs arrangements. The definition clarifies that standard fees and costs arrangements for a Part 6A product are those arrangements as reported to APRA under the investment performance and RSE structure standards. Next, the *smallest* of the actual returns across investment pathways would be taken to be the 'actual return' for the Part 6A product. The investment pathway with the lowest net investment returns or gross investment returns net of fees would represent the pathway that incurs the highest investment fees. This would incentivise funds to reduce investment fees on their highest fee pathways. An asset-weighted approach as undertaken for RAFE would not be possible due to data limitations.

Items [5], [8], [16] and [57]– subregulations 9AB.1 and 9AB.4– Meaning of representative administration fees and expenses or RAFE

The proposed Regulations would not substantively change the performance measure and its use of 'representative administration fees and expenses' or 'RAFE' as set out in the Principal Regulations. A product's 'actual RAFE' would be the actual administration fees and expenses charged in the most recent financial year (as charged on a $50,000 balance). 'Benchmark RAFE' would be the median administration fee and expenses (as charged on a $50,000 balance) across a certain category of products for the most recent financial year.

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Item 8 would repeal the definition of 'representative administration fees and expenses' or 'RAFE' in regulation 9AB.1 of the Principal Regulations and would substitute a new definition that provides that the term would have the meaning given by regulation 9AB.4A. Instead of appearing under 9AB.1 (the definitions provision), 'representative administration fees and expenses' or 'RAFE' would be set out separately in a new regulation 9AB.4A.

Item 16 would insert regulation 9AB.4A which provides an updated definition of 'RAFE'. The definition would clarify how RAFE would be worked out for a Part 6A product, a Part 6A product that is a lifecycle Part 6A product, and a Part 6A product that is a trustee-directed product.

Subregulation 9AB.4A(1) would clarify that the relevant fees and costs, and related tax expenses and benefits, would be those reported to APRA in relation to the Part 6A product's standard fee and costs arrangement.

Subregulation 9AB.4A(2) would provide that in working out an amount for RAFE, assume that the amount related to a beneficiary of the entity with an account balance in respect of the Part 6A product of $50,000 throughout the period. The purpose of this amendment would be to ensure RAFE is calculated on the basis of a representative member. This would not change the way that RAFE is worked out, but would make it explicit in the Principal Regulations, which is necessary due to changes in APRA's reporting standards. The $50,000 balance would not be affected by investment gains and losses.

However, products may require members to have a minimum account balance of more than $50,000. Therefore, these products will not have any members with a balance of $50,000, and zero administration fees will be reported. Subregulation 9AB.4A(2) would provide that where there is a minimum balance requirement of more than $50,000, the RAFE is calculated based on that minimum balance.

Subregulations 9AB.4A(3) to (6) would clarify that the RAFE for a lifecycle Part 6A product is the lifestage that would incur the *largest* RAFE from the set of lifestage RAFEs. The purpose of the amendment would be to ensure the Principal Regulations remain fit for purpose and provide certainty to trustees by explicitly stating in the law that it would be the largest RAFE that is relevant to 'actual RAFE' and 'benchmark RAFE'. Item 57 would repeal subregulations 9AB.16(7) and (8) of the Principal Regulations which set out how to provide RAFE for lifecycle Part 6A products. These subregulations would no longer be required as the rules are now provided for in the updated definition of RAFE.

Subregulations 9AB.4A(7) to (9) would clarify that the RAFE for trustee-directed products would be the standard fees and costs arrangement within each investment pathway and asset-weighted across investment pathways. Subregulation 9AB.4A(8) would provide the rule for asset-weighting across an investment pathway in relation to a period. Asset-weighting by pathway would provide an incentive for funds to reduce fees on the most popular pathways.

Item 5 would insert a definition for 'investment pathway' to clarify that if there is a choice of different ways of investing in a Part 6A product, as reported to APRA in accordance with the applicable RSE structure standard, each of those ways would be an investment pathway of the Part 6A product. A single Part 6A product can be

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accessed through multiple investment pathways. Investment pathways can be identified through APRA data collection and are the combinations of ways that a member may access the Part 6A product. In a complex superannuation structure the investment option can be accessed through different superannuation products and investment menus. Item 5 would also insert a definition of 'investment pathway weight', which has the meaning given by subregulation 9AB.4A.

Subregulation 9AB.4A(8) would clarify that RAFE is first worked out for each investment pathway for a quarter and then asset-weighted to get the RAFE for the quarter. The RAFE for the four quarters in a year would then be summed to produce the RAFE for a financial year. This would ensure that RAFE remains fit for purpose when new investment pathways begin during a financial year.

Item [56] – subregulation 9AB.16 – Meaning of benchmark RAFE

Item 56 would amend regulation 9AB.16 of the Principal Regulations which sets out the identification of 'benchmark RAFE'. The amendment clarifies that Part 6A products which start after 1 July during the test year are not included in the identification of 'benchmark RAFE'. That is, such products would be excluded from the group of products from which the median administration fee and expenses (as charged on a $50,000 balance) is found. As these products may have less than a full year of performance history and less than a full year's worth of administration fees and expenses, this exclusion would ensure the benchmark RAFE is not artificially skewed.

Items [17], [18], [19], [20], [21], [44], [45], [48] and [49] – subregulations 9AB.5, 9AB.13 and 9AB.14 – Meaning of strategic asset allocation or SAA

Under the Principal Regulations the calculation for 'strategic asset allocation' or 'SAA' was set out separately for standard Part 6A products and lifecycle Part 6A products. The amendments would place these rules together under regulation 9AB.5 of the Principal Regulations.

Items 17, 18, 19, 20 and 21 would consolidate and clarify how SAA is calculated for lifecycle Part 6A products, where the test would consider data reported at the lifestage level. This would ensure that the test more accurately reflects the characteristics of lifecycle products, but does not substantively change the operation of the current law.

Item 21 would insert a rule for where the SAA may not add up to 100 per cent where the trustee reports SAA at the disaggregate level. Subregulations 9AB.5(11) and (12) would allow APRA to apply a reasonable allocation to a covered asset class if the sum of all the SAAs do not equal 100 per cent.

Items 44, 45, 48 and 49 would make related consequential amendments relating to the consolidation of the definition of SAA.

Items [3] and [17] – subregulations 9AB.1 and 9AB.5 – Rules for determining 'currency hedging ratio'

Regulation 9AB.5 of the Principal Regulations provides rules to work out strategic asset allocation where certain information about 'asset domicile type', 'currency hedging ratio' and/or 'the 'asset listing type' is identified or not identified. Item 17 would update these rules to allow 'strategic asset allocation' to be worked out where

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information about 'currency hedging ratio' would not be identified but option-level currency exposure would be identified. Where currency exposure would be identified, it would be used to impute a currency hedging ratio for the international asset classes.

The purpose of the amendment would be to improve the accuracy of the test. The currency exposure would now be used for the performance test as, under the new asset allocation standard, funds now have the choice to report currency exposure at the investment option level instead of currency hedging ratios for each asset class.

Item 3 would insert a definition of 'currency exposure' into regulation 9AB.1 of the Principal Regulations. 'Currency exposure' of a standard Part 6A product in relation to a quarter, would mean the Part 6A product's currency exposure in relation to the quarter, as reported to APRA in accordance with the applicable asset allocation standard. 'Currency exposure' of a lifecycle Part 6A product in relation to a quarter, would mean the Part 6A product's currency exposure in relation to the lifestage and the quarter, as reported to APRA in accordance with the applicable asset allocation standard. This difference would be because lifecycle Part 6A products report currency hedging exposure at the lifestage level.

Items [5], [22], [43], [45], [47] and [49] – subregulations 9AB.1, 9AB.5A, 9AB.13 and 9AB.14 – Meaning of index

Under the Principal Regulations the calculation for 'index' was set out separately throughout Division 9AB. Item 5 and 22 would make amendments to consolidate the rules for calculating 'index' under a new regulation 9AB.5A so that there would be a single definition of the term for Division 9AB.

Items 43, 45, 47 and 49 would make related consequential amendments relating to the consolidation of the definition of index.

Items [1], [5], [22], [58] and [59] – subregulations 9AB.1, 9AB.5 and 9AB.17 – Alternatives asset class

Item 58 would amend the description of the covered asset class 'Other/Commodities' to 'Alternatives' to reflect the description of the covered asset class as it appears in the updated APRA reporting standard for asset allocation. Consequential amendments would be made to correct references to this covered asset class description throughout Division 9AB.

Items 22 and 59 would clarify the treatment of index assumptions for the Alternatives asset classes which can now be reported to APRA in an aggregated or disaggregated form (see table items 17, 18 and 19 of the table in 9AB.17). The amendments would allow the consideration of data whether it is reported to APRA in an aggregated or disaggregated form. The disaggregated form would be reported as Growth Alternatives and Defensive Alternatives.

Item 22 would also set out that for the Alternatives asset classes, the index returns for the underlying asset class would first be adjusted for fees and taxes using their corresponding fee and tax assumption and subsequently would have a weighting applied. This would provide for a more consistent calculation of the benchmark return for the Alternatives covered asset classes by ensuring each assumed component would be adjusted based on their relevant fee and tax assumption before aggregating.

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Item 59 would include a consequential change to table item 24 in the table of covered asset classes under 9AB.17(7) of the Principal Regulations to reflect that after the proposed adjustments in subregulations 9AB.13(7) and 9AB.14(7), the relevant assumed annual fee for the Alternatives asset class would be 0% and the relevant assumed rate of tax for the Alternatives asset class would be 0%. Table items 25 and 26 would reflect the disaggregated asset classes, Growth Alternatives and Defensive Alternatives.

Items 1 and 5 would insert definitions of 'adjusted index', 'IEH percentage', 'IEU percentage' and 'IFI percentage' as these are all new terms that would be required for the updated rules about the calculation of index for the Alternatives asset classes:

- 'Adjusted index' would be worked out using a formula in subregulation 9AB.5A(7);
- 'IEH percentage' would relate to the proportion of the allocation benchmarked against international equities hedged;
- 'IEU percentage' would relate to the proportion of the allocation benchmarked against international equities unhedged;
- 'IFI percentage' would relate to the proportion of the allocation benchmarked against international fixed interest.

Items [2], [4], [6] and [9] – subregulation 9AB.1 – Definitions of asset allocation standard, fees standard, investment performance standard, and RSE standard

Items 2, 4, and 6 would repeal the definitions of 'asset allocation standard', 'fees standard', and 'investment performance standard' in regulation 9AB.1 of the Principal Regulations and would substitute new definitions that incorporate new legislative instruments that were made in 2023.

Item 9 would insert a definition of 'RSE structure standard' to incorporate another two reporting standards made in 2023 under which trustees report information relevant for the performance test.

The amendments would provide clarity for trustees that APRA is allowed to use information collected under the new APRA reporting standards which have been determined by:

- *Financial Sector (Collection of Data) (reporting standard) determination No. 42 of 2023;*
- *Financial Sector (Collection of Data) (reporting standard) determination No. 43 of 2023;*
- *Financial Sector (Collection of Data) (reporting standard) determination No. 44 of 2023;*
- *Financial Sector (Collection of Data) (reporting standard) determination No. 45 of 2023; and*
- *Financial Sector (Collection of Data) (reporting standard) determination No. 46 of 2023; and*
- *Financial Sector (Collection of Data) (reporting standard) determination No. 47 of 2023.*

APRA would be able to use information collected under these legislative instruments and analogous past and future instruments. The Regulations would incorporate the above legislative instruments as in force at the commencement of the instrument, and analogous legislative instruments (whether or not the legislative instrument is in

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force). The incorporated instruments, past, present and future, are freely and publicly available or will be available on the Federal Register of Legislation.

Items [37], [38], [39], [40], [41], [50], [51], [52], [53] [54] – subregulations 9AB.12 and 9AB.14 – Actual and benchmark return formulae modifications determination

Items 37, 38, 39, 40 and 41 would amend section 9AB.12 of the Principal Regulations to allow APRA to make a general determination to combine part quarter data for the calculation of 'actual return' for a lifecycle Part 6A product. Items 50, 51, 52, 53 and 55 would make a similar amendment to section 9AB.14 of the Principal Regulations for the calculation of 'benchmark return' for a lifecycle Part 6A product. This would ensure the test can more accurately reflect products which change character during a quarter. The data for a quarter before and after a change would be "stitched" together for the purposes of the test.

It is expected that APRA will make a general determination that will be made publicly available on the APRA website and the Federal Register of Legislation. Despite this amendment, APRA would retain the power provided for under the Principal Regulations to make a specific determination for intra-quarter data stitching. The amendments would clarify that the formulas may be modified through either the specific or general determination.

Items [22], [28], [33], [42], and [46] – subregulations 9AB.5, 9AB.11, 9AB.12, 9AB.13 and 9AB.14 – Rounding rules

Items 19, 22, 25, 33 and 37 would update the rounding rules in Part 9AB of the Principal Regulations to ensure greater certainty and consistency. Certain calculation outputs would now be rounded to 10 decimal places instead of 4 decimal places. For certain calculation outputs that are eleven or more decimal places, the output would be rounded to 10 decimal places. This would be done by rounding up if the eleventh decimal place is a 5 or higher, or down if the eleventh decimal place is a 4 or lower. Where calculation output is 10 decimal places or lower, generally the rounding rules would not apply and the value would be inputted into the formula in full.

Items [9], [61], [62], [63] and [64] – subregulation 9AB.24 – Fee ranking formula to support implementation of YourSuper comparison tool

Division 9AB.23 of the Principal Regulations specify formulas and method by which Part 6A products can be comparatively ranked. Part 6A products are ranked according to two methods: by net returns and by total annual fees. These rankings are published on the YourSuper comparison tool – the interactive website maintained by the Commissioner of Taxation.

Items 61, 62 and 64 would amend regulation 9AB.24 of the Principal Regulations to ensure that products can continue to be ranked by total annual fees after changes to APRA's data collection to reflect ASIC Regulatory Guides. The updated fee ranking formula would take into account 'applicable cost amount' which means either the Part 6A products applicable transaction costs, or applicable indirect cost ratio. Transactions costs and indirect costs ratio are both relevant to the calculation of total annual fees and either can be reported to APRA. Where 'applicable transaction costs' are reported, this should replace 'indirect cost ratio' in the fee ranking formula. This would ensure the formula is appropriate for products whether they report fees based

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on the 2017 version of ASIC Regulatory Guide RG 97, or the newer 2020 version of ASIC Regulatory Guide RG 97.

Item 64 would insert subregulation 9.AB.24(4) to provide the method for calculating the 'applicable transaction costs' for the purposes of the fee ranking formula in subregulation 9.AB.24(1).

Item 9 inserts definitions for 'transaction costs cap', 'transactions costs flat amount' and 'transaction costs percentage' that are necessary for calculating the 'applicable transaction costs'. The definition clarifies that this information corresponds to information reported to APRA in accordance with the fees standard.

Item 63 corrects a typographical error.

Items [65], [66] and [67] – subregulation 14.28 and 14.34 and Division 14.34 – Application and transitional provisions

Item 65 would make a minor amendment to clarify that the transitional arrangements in Division 14.27 are the arrangements specifically arising out of to Schedule 1 to the *Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2021*. This would fix a technical drafting issue where the original provision did not correctly specify the amending regulations.

Item 66 would repeal a transitional provision that is no longer required as it was only applicable to the 2021 performance test, which has occurred.

Item 67 would insert a new Division 14.34 to the Principal Regulations to provide transitional arrangements arising out of the amendments made by the proposed Regulations. The first transitional rule would provide that the amendments apply on and after 1 July 2023. The second transitional rule would provide that for performance assessment conducted for the 2022-23 financial year, the minimum period of performance history that a product would have to be subject to the performance test is 6 years. The third transitional rule would provide that for performance assessment conducted for the 2022-23 financial year, the lookback period would be 9 years.

Schedule 2 –Amendments to the *Electronic Transactions Regulations 2020*

Subsections 60C(3) and (4) of the *Superannuation Industry (Supervision) Act 1993* require APRA to give notification in writing, which includes a copy of the determination, about the annual performance assessment to trustees of the superannuation fund. Part 9AB of the Principal Regulations requires APRA to give written notification about various discretionary decisions related to the annual performance assessment to trustees of the superannuation fund.

The *Electronic Transactions Act 1999* applies to all Commonwealth laws unless, pursuant to section 7A of that Act, they are specifically exempted by regulations, or another exemption applies. Schedule 1 to the *Electronic Transactions Regulations 2020* contains a list of Commonwealth laws that are exempt from the application of the *Electronic Transactions Act 1999*. Exemptions are necessary to account for circumstances where it is not appropriate to provide information, documents or signatures electronically.

s 22(1)(a)(ii)

Item 89 of the table in Section 1 of Schedule 1 to the *Electronic Transactions Regulations 2020* exempts the whole of the *Superannuation Industry (Supervision) Act 1993* from certain provisions of the *Electronic Transactions Act 1999*, except for certain provisions that are listed in that item. Item 90 of the table in Section 1 of Schedule 1 to the *Electronic Transactions Regulations 2020* exempts the whole of the *Superannuation Industry (Supervision) Regulations 1994* from certain provisions of the *Electronic Transactions Act 1999*, except for certain provisions that are listed in that item.

The amendments in Schedule 2 to the proposed Regulations would apply the *Electronic Transactions Act 1999* to subsections 60C(3) and 60C(4) of the SIS Act. The amendments in Schedule 2 to the proposed Regulations also would apply the *Electronic Transactions Act 1999* to certain provisions in Part 9AB of the Principal Regulations. The amendments would enable that where APRA is required to give notification in writing of an APRA determination in relation to the annual performance assessment of superannuation products, it may do so by means of electronic communication.

Allowing electronic communication will reduce the administration burden for APRA while ensuring that notifications are received by trustees in a timely manner. This is in light of the extension of the annual performance test to trustee-directed products which has significantly increased the number of products subject to the test, and subsequently the number of notifications in writing APRA must give.

s 22(1)(a)(ii)

[redacted]

ASSISTANT TREASURER
MINISTER FOR FINANCIAL SERVICES

Departmental No. 316 of 2024

Executive Council
Meeting No. 19

Approved in Council

s 22(1)(a)(ii)

Sam Mostyn AC
Governor-General

12 September 2024

Filed in the Records
of the Council

s 22(1)(a)(ii)

Secretary to the Executive Council

Minute Paper for the Executive Council

Subject

Electronic Transactions Act 1999
Corporations Act 2001

Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024

Recommended for the approval of Her Excellency the Governor-General in Council that she make Regulations in the attached form.

s 22(1)(a)(ii)

Stephen Jones
Assistant Treasurer
Minister for Financial Services

Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024

I, the Honourable Sam Mostyn AC, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 12 September 2024

s 22(1)(a)(ii)

[redacted]

Governor-General

s 22(1)(a)(ii)

[redacted]

Assistant Treasurer

Minister for Financial Services

Contents

1 Name

This instrument is the *Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	
2. Schedule 1, Parts 1 and 2	The day after this instrument is registered.	
3. Schedule 1, Part 3	Immediately after the commencement of the provisions covered by table item 2.	
4. Schedule 1, Part 4	Immediately after the commencement of the provisions covered by table item 3.	
5. Schedule 1, Part 5	At the same time as Part 5 of Schedule 1 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024* commences.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

(a) the *Corporations Act 2001*;

(b) the *Electronic Transactions Act 1999*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Part 1—Superannuation

Electronic Transactions Regulations 2020

1 Clause 1 of Schedule 1 (table item 89, column 1, paragraph (h))

Omit "subsection 99FA(1)", substitute "section 99FA".

Part 2—Ongoing fee arrangements

Corporations Regulations 2001

2 Subparagraph 7.6.02A(2)(a)(vi)

Repeal the subparagraph.

3 Subparagraphs 7.6.02A(2)(a)(ix) and (x)

Repeal the subparagraphs.

4 Regulation 7.7A.11

Repeal the regulation.

5 Paragraphs 7.7A.11AA(2)(a) and (b)

Repeal the paragraphs.

6 After paragraph 7.7A.11AA(2)(c)

Insert:

(ca) each consent given by the client to enter into or renew an ongoing fee arrangement for the purposes of section 962G of the Act;

(cb) the matters disclosed to the client under subsection 962G(2) of the Act;

7 After paragraph 7.7A.11AA(3)(b)

Insert:

(ba) the matters set out in section 962T of the Act;

8 Paragraph 9.4AB.02(2)(e)

Omit "section 962P", substitute "section 962Z".

9 Paragraph 9.4AB.02(2)(f)

Repeal the paragraph.

10 In the appropriate position in Chapter 10

Insert:

Part 10.52—Application provisions relating to the Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024

10.52.01 Application—compliance records for fee disclosure statements

Despite the repeal of paragraphs 7.7A.11AA(2)(a) and (b) made by Part 2 of Schedule 1 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024*, those paragraphs continue to apply in relation to fee disclosure statements required to be given under section 962G of the Act as in force immediately before the commencement of Part 2 of Schedule 1 to the

Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024 as if those repeals had not happened.

10.52.02 Application—contraventions relating to ongoing fee arrangements

The amendments of subregulations 7.6.02A(2) and 9.4AB.02(2) made by Part 2 of Schedule 1 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024* apply in relation to conduct occurring wholly on or after the day that is 6 months after the commencement of Part 2 of Schedule 1 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024*.

Part 3—Financial Services Guide

Corporations Regulations 2001

11 After subparagraph 7.6.02A(2)(a)(v)

Insert:

(va) subsection 943G(3);
(vb) subsection 943H(4);
(vc) subsection 943K(2);
(vd) subsection 943L(2);

12 At the end of subregulation 7.7.02(4A)

Add:

Note: The providing entity is not required to tell the client that a Financial Services Guide exists or that the provider will send out a Financial Services Guide on request if the provider makes website disclosure information available in accordance with Division 2A of Part 7.7 of the Act (see subsection 941C(5A) of the Act).

13 Subregulation 7.7.02A(2)

Repeal the subregulation, substitute:

(2) For the purposes of paragraph 951C(1)(c) of the Act, section 941C of the Act is modified by inserting after subsection 941C(7) the following subsections:

"(7AA) The providing entity does not have to give the client a Financial Services Guide in the following circumstances:

(a) if the providing entity will, or is likely to, provide a financial service to the client in a recommendation situation (see section 1012A), an issue situation (see section 1012B) or a sale situation (see section 1012C);
(b) the providing entity gives to the client a Product Disclosure Statement;
(c) the providing entity gives to the client a statement that:
(i) contains so much of the information required by section 942B or 942C (as the case may be), and any regulations made for the purposes of the appropriate section, as is not already set out in the Product Disclosure Statement; and
(ii) complies with the requirements set out in subsection (7AB);
(d) the statements mentioned in paragraphs (b) and (c) are given at the same time.

(7AB) The statement referred to in paragraph (7AA)(c) must:

(a) be up to date as at the time it is given to the client; and
(b) may contain information apart from that referred to in subparagraph (7AA)(c)(i); and
(c) meet the requirements of subsections 942B(3) and (6A) or subsections 942C(3) and (6A) (as the case may be)."

14 At the end of subregulation 7.7.03(1)

Add:

Note: This regulation (other than paragraph (5)(b) and subregulation (6)) is also relevant to website disclosure information made available in accordance with Division 2A of Part 7.7 of the Act (see paragraph 943J(a) of the Act).

15 At the end of subregulation 7.7.03A(1)

Add:

Note: This regulation is also relevant to website disclosure information made available in accordance with Division 2A of Part 7.7 of the Act (see paragraph 943J(a) of the Act).

16 At the end of subregulation 7.7.04(1)

Add:

Note: This regulation is also relevant to website disclosure information made available in accordance with Division 2A of Part 7.7 of the Act (see paragraph 943J(a) of the Act).

17 At the end of subregulation 7.7.04(5)

Add:

Note: If website disclosure information is made available in accordance with Division 2A of Part 7.7 of the Act, the statement required by subparagraph (d)(ii) of this subregulation must set out that the client may request particulars of the remuneration (including commissions) or other benefits but that the request must be made before any financial service identified in the website disclosure information is provided to the client.

18 Paragraph 7.7.04A(1)(a)

After "the Financial Services Guide is given to the client", insert "or the website disclosure information is made available".

19 Paragraph 7.7.04A(1)(c)

After "the Financial Services Guide", insert "or the website disclosure information".

20 Subregulation 7.7.04A(2)

Repeal the subregulation, substitute:

(2) A request under subregulation (1) must be made:

(a) if the providing entity makes website disclosure information available in accordance with Division 2A of Part 7.7 of the Act—before any financial service identified in the website disclosure information is provided to the client; or

(b) otherwise—within a reasonable time after the client is given the Financial Services Guide and before any financial service identified in the Guide is provided to the client.

21 Subregulation 7.7.04AA(2)

Omit "963C(b)" (first occurring), substitute "963C(1)(b)".

22 Subregulation 7.7.04AA(2) (note)

Omit "Note", substitute "Note 1".

23 Subregulation 7.7.04AA(2) (note)

Omit "963C(b)", substitute "963C(1)(b)".

24 At the end of subregulation 7.7.04AA(2)

Add:

> Note 2: This regulation is also relevant to website disclosure information made available in accordance with Division 2A of Part 7.7 of the Act (see paragraph 943J(a) of the Act).

25 Subregulation 7.7.04AB(2)

Omit "963C(b)" (first occurring), substitute "963C(1)(b)".

26 Subregulation 7.7.04AB(2) (note)

Omit "Note", substitute "Note 1".

27 Subregulation 7.7.04AB(2) (note)

Omit "963C(b)", substitute "963C(1)(b)".

28 At the end of subregulation 7.7.04AB(2)

Add:

> Note 2: This regulation is also relevant to website disclosure information made available in accordance with Division 2A of Part 7.7 of the Act (see paragraph 943J(b) of the Act).

29 At the end of subregulation 7.7.05A(1)

Add:

> Note: This regulation is also relevant to website disclosure information made available in accordance with Division 2A of Part 7.7 of the Act (see paragraph 943J(b) of the Act).

30 At the end of subregulation 7.7.05B(1)

Add:

> Note: This regulation is also relevant to website disclosure information made available in accordance with Division 2A of Part 7.7 of the Act (see paragraph 943J(b) of the Act).

31 At the end of subregulation 7.7.05C(1)

Add:

> Note: This subregulation is also relevant to website disclosure information made available in accordance with Division 2A of Part 7.7 of the Act (see paragraph 943J(a) of the Act).

32 At the end of subregulation 7.7.05C(2)

Add:

> Note: This subregulation is also relevant to website disclosure information made available in accordance with Division 2A of Part 7.7 of the Act (see paragraph 943J(b) of the Act).

33 At the end of subregulation 7.7.06(1)

Add:

> Note: This regulation (other than paragraph (5)(b) and subregulation (6)) is also relevant to website disclosure information made available in accordance with Division 2A of Part 7.7 of the Act (see paragraph 943J(b) of the Act).

34 At the end of regulation 7.7.06A

Add:

> Note: This regulation is also relevant to website disclosure information made available in accordance with Division 2A of Part 7.7 of the Act (see paragraph 943J(b) of the Act).

35 At the end of subregulation 7.7.06B(1)

Add:

Note: This regulation is also relevant to website disclosure information made available in accordance with Division 2A of Part 7.7 of the Act (see paragraph 943J(b) of the Act).

36 At the end of subregulation 7.7.07(1)

Add:

Note: This regulation is also relevant to website disclosure information made available in accordance with Division 2A of Part 7.7 of the Act (see paragraph 943J(b) of the Act).

37 At the end of subregulation 7.7.07(5)

Add:

Note: If website disclosure information is made available in accordance with Division 2A of Part 7.7 of the Act, the statement required by subparagraph (d)(ii) of this subregulation must set out that the client may request particulars of the remuneration (including commissions) or other benefits but that the request must be made before any financial service identified in the website disclosure information is provided to the client.

38 Paragraph 7.7.07A(1)(a)

After "the Financial Services Guide is given to the client", insert "or the website disclosure information is made available".

39 Paragraph 7.7.07A(1)(c)

After "the Financial Services Guide", insert "or the website disclosure information".

40 Subregulation 7.7.07A(2)

Repeal the subregulation, substitute:

(2) A request under subregulation (1) must be made:
- (a) if the providing entity makes website disclosure information available in accordance with Division 2A of Part 7.7 of the Act—before any financial service identified in the website disclosure information is provided to the client; or
- (b) otherwise—within a reasonable time after the client is given the Financial Services Guide and before any financial service identified in the Guide is provided to the client.

41 Regulation 7.7.10AAA (note)

After "942C(8)", insert "(Financial Services Guides) and section 943N (website disclosure information)".

42 After regulation 7.7.10AD

Insert:

7.7.10ADA Website disclosure information

For the purposes of paragraph 951C(1)(c) of the Act, Part 7.7 of the Act applies as if section 943N of the Act were omitted and the following section were substituted:

"943N Record of advice must be provided in certain circumstances

If:

(a) the website disclosure information includes a statement to the effect that a client may request a record of further advice; and

(b) the client is provided with further advice to which that statement applies; and

(c) the client has not already been provided with a record of that advice;

the providing entity must comply with a request made in accordance with that statement for a record of that advice.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1))."

43 Subregulation 7.7.10AE(3A) (at the end of note 2)

Add "(Financial Services Guides) and section 943N (website disclosure information) of the Act".

44 Paragraph 9.4AB.02(2)(c)

Repeal the paragraph, substitute:

(c) subsection 941B(4);

(ca) subsection 943G(3);

(cb) subsection 943H(4);

(cc) subsection 943K(2);

(cd) subsection 943L(2);

45 In the appropriate position in Part 10.52

Insert:

10.52.03 Application—contraventions relating to website disclosure information

The amendments of subregulations 7.6.02A(2) and 9.4AB.02(2) made by Part 3 of Schedule 1 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024* apply in relation to conduct occurring wholly on or after the commencement of Part 3 of Schedule 1 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024*.

Part 4—Conflicted remuneration

Corporations Regulations 2001

46 Subregulations 7.7.09BC(2) and 7.7.09BD(2)

Omit "963C(b)" (wherever occurring), substitute "963C(1)(b)".

47 Paragraph 7.7A.11C(1)(d)

Repeal the paragraph.

48 Subparagraph 7.7A.11C(2)(d)(ii)

Omit "products; or", substitute "products.".

49 Paragraph 7.7A.11C(2)(e)

Repeal the paragraph.

50 Paragraph 7.7A.11D(1)(d)

Repeal the paragraph.

51 Subparagraph 7.7A.11D(2)(d)(ii)

Omit "products; or", substitute "products.".

52 Paragraph 7.7A.11D(2)(e)

Repeal the paragraph.

53 Regulation 7.7A.12 (notes 2 and 3)

Repeal the notes.

54 Regulation 7.7A.12E

Repeal the regulation.

55 Paragraph 7.7A.12F(a)

Omit "963C(f)", substitute "963C(1)(f)".

56 Regulation 7.7A.12H

Repeal the regulation.

57 Subregulation 7.7A.12I(3) (paragraph (a) of the definition of *prescribed provision*)

Omit "963B(1)(a), (b), (c) or (d)", substitute "963B(1)(a), (b) or (ba)".

58 Subregulation 7.7A.12I(3) (paragraph (b) of the definition of *prescribed provision*)

Omit "963C(a), (b), (c), (d) or (e)", substitute "963C(1)(a), (b), (c) or (d)".

59 Subregulation 7.7A.12I(3) (paragraph (b) of the definition of *prescribed provision*)

Omit "963C(f)", substitute "963C(1)(f)".

60 Regulation 7.7A.13

Omit "963C(b)(i)", substitute "963C(1)(b)(i)".

61 Regulation 7.7A.13 (note)

Omit "963C(b)", substitute "963C(1)(b)".

62 Subregulation 7.7A.14(1)

Omit "963C(c)(iii)", substitute "963C(1)(c)(iii)".

63 Subregulation 7.7A.14(2)

Omit "963C(c)(i)", substitute "963C(1)(c)(i)".

64 Subregulation 7.7A.14(2) (note)

Omit "963C(c)", substitute "963C(1)(c)".

65 Subregulation 7.7A.15(1)

Omit "963C(c)(iii)", substitute "963C(1)(c)(iii)".

66 Subregulation 7.7A.15(2)

Omit "963C(c)(i)", substitute "963C(1)(c)(i)".

67 Subregulation 7.7A.15(2) (note)

Omit "963C(c)", substitute "963C(1)(c)".

68 Paragraph 7.7A.15A(1)(a)

Omit "963C(f)", substitute "963C(1)(f)".

69 Paragraph 7.7A.15A(2)(c)

Omit "963C(c)(iii)", substitute "963C(1)(c)(iii)".

70 Subparagraph 7.8.11A(2)(b)(i)

Omit "963C(b)", substitute "963C(1)(b)".

71 Subparagraph 7.8.11A(2)(b)(ii)

Omit "963C(c)", substitute "963C(1)(c)".

72 In the appropriate position in Part 10.52

Insert:

10.52.04 Application—repeal of benefits for employees of ADIs

(1) The repeal of regulation 7.7A.12H by Part 4 of Schedule 1 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024* applies to a benefit given to a provider, under an arrangement, if:

(a) the arrangement was entered into on or after the day (the ***deferred start day***) that is 6 months after the commencement of Part 4 of Schedule 1 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024*; or

(b) all of the following apply:

(i) the arrangement was varied on or after the deferred start day;

(ii) the variation related to the giving of benefits under the arrangement;

(iii) the benefit is given on or after the deferred start day.

(2) The repeal of that regulation also applies to a benefit given to a provider, otherwise than under an arrangement, on or after the deferred start day.

Part 5—Insurance commissions

Corporations Regulations 2001

73 Regulation 7.7A.12G

Before "A benefit", insert "(1)".

74 At the end of regulation 7.7A.12G

Add:

(2) Section 963BB of the Act (about informed consent for insurance commissions) applies in relation to subregulation (1) in the same way it applies in relation to paragraph 963B(1)(a) of the Act.

75 Paragraph 9.4AB.02(2)(j)

Omit "section 963K", substitute "subsection 963K(1)".

76 In the appropriate position in Part 10.52

Insert:

10.52.05 Application—informed consent for benefits given in relation to general insurance products

(1) The amendments of regulation 7.7A.12G made by Part 5 of Schedule 1 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024* apply to benefits given on or after the commencement of Part 5 of Schedule 1 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024* in relation to the issue or sale of general insurance products on or after that commencement.

(2) However, those amendments do not apply to benefits given in connection with the issue or sale of a general insurance product if:

(a) the product is a renewal of another general insurance product; and

(b) that other general insurance product was issued or sold before the commencement of that Part.

EXPLANATORY MEMORANDUM

Minute No. 316 of 2024 — Assistant Treasurer and Minister for Financial Services

Subject - *Electronic Transactions Act 1999*

Corporations Act 2001

Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024

The proposed Regulations would support increased access to affordable financial advice by making amendments consequential to the commencement of Schedule 1 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024*.

The *Electronic Transactions Act 1999* (the ET Act) facilitates and promotes the use of electronic communications and transactions by validating transactions that take place by means of electronic communication for the purposes of laws of the Commonwealth, and by deeming requirements imposed under Commonwealth laws to be met if done using certain electronic forms, subject to the exceptions and conditions in the ET Act. The *Corporations Act 2001* (the Corporations Act) is the primary act regulating corporate and other business entities in Australia, regulating the formation, operation and winding up of companies and other business entities as well as financial services, including financial advice, and other market infrastructure.

Section 16 of the ET Act and section 1364 of the Corporations Act provide that the Governor-General may make regulations prescribing matters required or permitted by those Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to those Acts. Section 7A of the ET Act also provides that the regulations may provide that all or specified provisions of that Act do not apply to transactions, requirements, permissions, electronic communications or other matters specified, or of classes specified, in the regulations for the purposes of that section, or in circumstances specified, or of classes specified, in the regulations for the purposes of that section.

The purpose of the *Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024* (the proposed Regulations) is to support increased access to affordable and quality financial advice by making amendments consequential to the commencement of Schedule 1 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024* (the Amending Act).

Schedule 1 to the Amending Act delivers tranche 1 of the Government's Delivering Better Financial Outcomes package, including the initial response to the Quality of Advice Review (the Review). Tranche 1 implements the Government's response to recommendations 7, 8, 10, 13.1 to 13.5 and 13.7 to 13.9 of the Review. This includes:

- Amendments to the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) and the *Income Tax Assessment Act 1997* to provide superannuation trustees with more legal certainty about paying financial advice fees agreed

s 22(1)(a)(ii)

[redacted]

between a member and their financial adviser from a member's superannuation fund account by ensuring the adviser fees are not paid in breach of the SIS Act and clarifying the tax treatment of such payment; and

- Amendments to the Corporations Act to remove unnecessary red tape that currently adds to the cost of providing financial advice with no benefit to consumers and improving consent requirements for certain insurance commissions.

These amendments support increased access to affordable and quality financial advice for millions of Australians and will particularly benefit the five million Australians at or approaching and planning for their retirement that need assistance navigating the pension and superannuation systems.

The proposed Regulations would:

- Support written information or documentation requirements for the purposes of section 99FA of the SIS Act to continue to be met electronically;
- Remove requirements related to Fee Disclosure Statements, update record keeping obligations for new consent requirements and remove references to civil penalties which are removed by the Amending Act;
- Align requirements for Financial Services Guides and Website Disclosure Information and make other consequential amendments;
- Streamline the regulations for conflicted remuneration in line with the changes to the Amending Act; and
- Ensure the informed consent requirements apply for benefits given in relation to a general insurance product where personal advice is provided.

Treasury consulted on an exposure draft of the proposed Regulations between 11 June and 8 July 2024. Submissions were supportive. Following consultation, amendments principally accommodated the subsequent Royal Assent of the Amending Act.

The ET Act and the Corporations Act specify no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

The proposed Regulations would be a legislative instrument for the purposes of the *Legislation Act 2003* and would be subject to disallowance and automatic repeal in accordance with sections 42 and 48A of that Act respectively.

All of the proposed Regulations except Part 5 of Schedule 1 would commence the day after the instrument is registered on the Federal Register of Legislation. Part 5 of Schedule 1 would commence when Part 5 of Schedule 1 to the Amending Act commences. This is on 10 July 2025.

Details of the proposed Regulations are set out in the Attachment.

The Minute recommends that the Regulations be made in the form proposed.

<u>Authority</u>: Section 16 of the
Electronic Transactions Act 1999
Section [redacted] s 22(1)(a)(ii)
Corporatic [redacted]

s 22(1)(a)(ii)

ATTACHMENT

<u>Details of the proposed *Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024*</u>

<u>Section 1 – Name</u>

This section provides that the name of the regulations would be the *Treasury Laws Amendment (Delivering Better Financial Outcomes) Regulations 2024* (the Regulations).

<u>Section 2 – Commencement</u>

Sections 1 to 4 and Parts 1 to 4 of Schedule 1 to the Regulations would commence the day after the Regulations were registered on the Federal Register of Legislation. Parts 3 and 4 would technically commence immediately after Part 2. This sequence is necessary as Part 2 creates a new part of the *Corporation Regulations 2001* (Corporations Regulations) for application provisions which must commence before such provisions can be inserted by other Parts of these Regulations.

Part 5 of Schedule 1 would commence when the corresponding Part 5 of Schedule 1 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024* (the Amending Act) commences; that is, 10 July 2025 (the day after the end of the period of 12 months beginning on the day the Amending Act received Royal Assent, being 9 July 2024).

<u>Section 3 – Authority</u>

The Regulations would be made under the *Corporations Act 2001* (Corporations Act) and the *Electronic Transactions Act 1999* (ET Act).

<u>Section 4 – Schedule</u>

This section would provide that each instrument specified in the Schedules to this instrument are amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

<u>Schedule 1 – Amendments</u>

Part 1 - Superannuation

Item 1 would make consequential amendments to the *Electronic Transactions Regulations 2020* (ET Regulations) to ensure that written information or documentation requirements under section 99FA of the *Superannuation Industry (Supervision) Act 1993* (SIS Act), as repealed and replaced by item 2 of Schedule 1 to the Amending Act, could continue to be given electronically.

The table in clause 1 of Schedule 1 of the ET Regulations specifies Commonwealth laws to which certain sections of the ET Act do not apply. The SIS Act is such a law, however table item 89 lists certain provisions of the SIS Act which remain subject to the ET Act. Paragraph (h) in table item 89 currently specifies subsection 99FA(1) of the SIS Act as a provision which is subject to the ET Act. s 22(1)(a)(ii) [redacted]

s 22(1)(a)(ii)

Item 1 of the Regulations would amend paragraph (h) of table item 89 to prescribe section 99FA in its entirety, rather than only subsection (1). This amendment would reflect the expansion of section 99FA by the Amending Act, to ensure that actions under the amended section can be satisfied electronically, subject to the specific conditions set out in the relevant sections of the ET Act. For example:

- Electronic communication of information contemplated by section 99FA as amended could be done electronically (see subsection 8(1) of the ET Act);
- The requirement for a written consent or request for the purposes of section 99FA as amended could continue to be satisfied electronically (see subsection 9(1) of the ET Act);
- The trustee or trustees of the relevant superannuation fund could store copies of requests or consents electronically (see subsection 12(1) of the ET Act); and
- A written request or consent for the purposes of section 99FA would be attributed to a member if sent electronically by them or with their authority (see section 15 of the ET Act and subject to the conditions in that section).

Part 2 – Ongoing fee arrangements

Part 2 of Schedule 1 to the Amending Act implements recommendation 8 of the Quality of Advice Review (Review), published December 2022, by amending the Corporations Act to establish a consolidated and streamlined consent process for when a client enters or renews an ongoing fee arrangement and authorises ongoing advice fees to be deducted from a financial product. This includes removing the previous requirement for advisers to provide a fee disclosure statement to their clients as part of an ongoing fee arrangement, and removing disproportionate civil penalties attaching to a fee recipient's failure to provide certain notifications to their client.

Part 2 of Schedule 1 to the Regulations would make consequential amendments to remove redundant obligations relating to fee disclosure statements and ensure existing obligations are updated to reflect the Corporations Act as amended. Items 2 and 3 would repeal subparagraphs7.6.02A(2)(a) (vi), (ix) and (x) of the Corporations Regulations. Subregulation 7.6.02A(2) provides that certain breaches of civil penalty provisions which are prescribed in the subparagraphs need not be notified to ASIC. The Amending Act repeals the provisions prescribed in subparagraphs 7.6.02A(2)(a) (vi), (ix) and (x), so those provisions do not need to be specified in subregulation 7.6.02A(2) any longer.

Item 4 would repeal regulation 7.7A.11, which relates to fee disclosure statements. Currently, subregulation 7.7A.11(1) provides that for the purposes of paragraph 962H(3)(a) of the Corporations Act information about product fees is not required to be included in fee disclosure statements, while subregulation 7.7A.11(2) contains historic transitional arrangements. The Amending Act repeals the fee disclosure statement regime, so this regulation is no longer required.

Items 5, 6 and 7 would adjust regulation 7.7A.11AA, which prescribes certain compliance records which must be kept by a fee recipient for the purpose of section 962X of the Corporations Act.

s 22(1)(a)(ii)

[redacted]

Item 5 would repeal subregulations 7.7A.11AA(2)(a) and (b), which require records relating to fee disclosure statements to be kept, as that regime is discontinued by the Amending Act. Transitional arrangements supporting this change are made by item 10 and described below.

Item 6 and item 7 would add paragraphs into regulation 7.7A.11AA to ensure proper records are kept to demonstrate compliance with the Corporations Act. New paragraph (2)(ca) would ensure that a fee recipient keeps a record of each consent given by the client to enter into or renew an ongoing fee arrangement for the purpose of section 962G of the Corporations Act, as amended. New paragraphs (2)(cb) and (3)(ba) would ensure that a fee recipient keeps records of the matters disclosed to the client to inform such consent to an ongoing fee arrangement under section 962G of the Corporations Act or to a deduction arrangement under section 962T of the Corporations Act as amended, respectively. These amendments would support due diligence and proper record keeping by fee recipients, and leverage the requirements for valid consent to an ongoing fee arrangement and a deduction arrangement set out in new sections 962G(1) and 962T of the Corporations Act, as amended by the Amending Act, which include the fee recipient having the consent or a copy of it.

Items 8 and 9 would adjust regulation 9.4AB.02, which prescribes civil penalty provisions that are subject to an infringement notice under section 1317DAN of the Corporations Act.

Item 8 would change the reference in subregulation 9.4AB.02(2)(e) from section 962P to section 962Z. This change would reflect the change in numbering of the provision providing a civil penalty for a fee recipient that charges a fee purporting to be an ongoing fee after termination of the ongoing fee arrangement with the relevant client, by the Amending Act.

Item 9 would repeal subregulation 9.4AB.02(2)(f), which refers to when a fee recipient contravenes subsection 962U(3) of the Corporations Act, as that subsection is repealed by the Amending Act.

Application and transitional arrangements

Item 10 would insert a new Part 10.52 and regulations 10.52.01 and 10.52.02 into the Corporations Regulations to set out how certain amendments in these Regulations would apply.

New Part 10.52 would contain all application provisions for the amendments made by these regulations.

Regulation 10.52.01 would provide application arrangements in relation to keeping compliance records that relate to fee disclosure statements. A fee recipient is currently required to keep records of each fee disclosure statement the fee recipient has given to a client, the date on which this occurred and the manner in which the statement was given by paragraphs 7.7A.11AA(2)(a) and (b) of the Corporations Regulations. If those paragraphs are repealed by item 5 of the Regulations there will be no requirement to keep or create new records, but a fee recipient will need to retain records created under previous requirements to demonstrate compliance with these requirements, for the purposes of section 962X of the Corporations Act. This is consistent with the intent of section 962X to ensure fee recipients can demonstrate compliance with their various obligations over time.

s 22(1)(a)(ii)

This is consistent with the application provisions of the Corporations Act, as amended by the Amending Act.

Regulation 10.52.02 would provide application arrangements for contraventions of subregulations 7.6.02A(2) and 9.4AB.02(2), to align with transitional arrangements in the Amending Act. Regulation 7.6.02A(2) would prescribe civil penalty provisions of the Corporations Act of which contravention will not be required to be notified to ASIC, while regulation 9.4AB.02 would prescribe civil penalty provisions to be subject to an infringement notice under section 1317DAN of the Corporations Act. Both regulations would be amended by Part 2 of Schedule 1 to these Regulations (see items 2, 3, 8 and 9) to reflect changes made by the Amending Act to the relevant civil penalty provisions. However, those Amending Act changes would only apply to new and existing ongoing fee arrangements from the 'start day', being the day that is 6 months after the commencement of Part 2 of Schedule 1 to the Amending Act (per sections 1708A and 1708B of the Corporations Act, inserted by the Amending Act). Regulation 10.52.02 would ensure the changes made to the Corporation Regulations by these Regulations apply in relation to conduct at the same time as the changes made by the Amending Act. This would mean that the regulator could issue infringement notices with respect to the old civil penalty provisions in the period before the new provisions apply, so there is no gap.

Part 3 – Financial Services Guide

Part 3 of Schedule 1 to the Amending Act amends Part 7.7 of the Corporations Act to address and expand on recommendation 10 of the Review, to make it easier for an AFS licensee or its authorised representative to provide a Financial Services Guide (FSG) to retail clients. The amendments mean a financial services licensee (AFS licensee) or its authorised representative that provides financial product advice (whether general advice or personal advice) can continue to give clients an FSG or, alternatively, can make information that would be required to be in that FSG available on their website as 'website disclosure information' in accordance with new Division 2A of Part 7.7. Website disclosure information is defined by section 943J of the Corporations Act as inserted by the Amending Act to mean the same statements and information that are required to be in an FSG by sections 942B and 942C of the Corporations Act, including any modifications, additions or exclusions made by the Corporations Regulations under those sections. This ensures that a client accessing the information through a provider's website has access to the same information as if they had been given an FSG.

Part 3 of Schedule 1 to the Regulations would make consequential amendments to the Corporations Regulations to clarify how certain regulations relating to an FSG apply in relation to website disclosure information and to adjust references to sections of the Corporations Act.

s 22(1)(a)(ii)

Explanatory note clarifying operation of subregulation 7.7.02(4A)

Item 12 would insert an explanatory note under subregulation 7.7.02(4A) of the Corporations Regulations. Subregulation 7.7.02(4A) provides that if general advice is provided during a telephone call and meets the requirements under subregulation 7.7.02(4), that the AFS licensee or authorised representative must tell the client that an FSG exists and that they will send out an FSG on request. Item 12 would insert an explanatory note under subregulation 7.7.02(4A) to clarify that a provider is not required to tell the client of those things if website disclosure information is made available in accordance with Division 2A of Part 7.7 of the Corporations Act. If a client requests an FSG under subregulation 7.7.02(4A), and the AFS licensee or authorised representative has made website disclosure information available, it is expected that the AFS licensee or authorised representative will assist the client in locating the website disclosure information on their website.

Explanatory notes clarifying statements and information to be included in website disclosure information

Items 14 to 17, 24 and 28 to 37 would insert explanatory notes about website disclosure information into relevant regulations in the Corporations Regulations to clarify that the requirements that apply in relation to content of an FSG may be relevant to website disclosure information.

Items 14 and 33 would insert explanatory notes under subregulations 7.7.03(1) and 7.7.06(1) of the Corporations Regulations, relating to an FSG given by an AFS licensee or authorised representative respectively. These regulations require an FSG to include a statement that describes the purpose and content of the FSG, which must draw the client's attention to certain matters, and if appropriate inform the client of other relevant documents. In an FSG, such information must be easy to understand, and prominently displayed. These information requirements are relevant to website disclosure information, which if made available must contain the required information and be easy to understand. Requirements in paragraph (5)(b) and (6), which specify how information is to be located in an FSG, are not relevant to website disclosure information, which is different to an FSG and agnostic as to form.

Items 15 and 35 would insert explanatory notes under subregulations 7.7.03A(1) and 7.7.06B(1) of the Corporations Regulations, which require an FSG given by an AFS licensee or its authorised representative respectively to include statements about arrangements for compensation. These requirements are relevant to website disclosure information, which if made available must contain the information about compensation arrangements.

s 22(1)(a)(ii)

Items 16, 17, 36 and 37 would insert explanatory notes under subregulations 7.7.04(1) and (5) and subregulations 7.7.07(1) and (5) of the Corporations Regulations, which require an FSG given by an AFS licensee or its authorised representative respectively to contain information about remuneration (including commissions) and other benefits that another person will receive for referring a person to the AFS licensee or representative at the time the FSG is given to the client. The information required depends on the extent to which it is ascertainable at the time the FSG is given to the client, and whether personal advice will be given to the client. In brief, if certain particulars of remuneration are not ascertainable at that time, then a subset of remuneration information must be provided and either a statement about calculation of the information or that the client may request further information (depending on whether personal advice will be given). The notes inserted by items 16 and 36 would clarify that these requirements are relevant to website disclosure information, which if made available must contain the relevant information about remuneration and statements. Further, the Amending Act contains a requirement that website information be kept up to date, in new section 943L. This means that if website disclosure information is made available that contains a subset of remuneration information as particulars could not be ascertained, if those particulars later become ascertainable the website disclosure information would need to be updated in accordance with the requirements for ascertainable remuneration information.

The notes inserted by items 17 and 37 would clarify the timing requirements of subparagraphs 7.7.04(5)(d)(ii) and 7.7.07(5)(d)(ii) in relation to website disclosure information. Where applicable, those subparagraphs require a providing entity to give a statement to the client that the client may request particulars of remuneration within a reasonable time of being given an FSG and before receiving any financial service identified in the FSG. The notes would clarify that if the providing entity has made FSG information available as website disclosure information, the statements required by the respective subparagraphs (d)(ii) are simply that the client may request particulars of the remuneration before receiving a relevant financial service. This clarification reflects the fact that an FSG may never be given if website disclosure information is made available, and is intended to ensure the required statement is clear that a client can request further information about remuneration in that situation.

Items 24 and 28 would insert new explanatory notes at the end of regulations 7.7.04AA and 7.7.04AB. These Regulations provide that information about a non-monetary benefit that is not conflicted remuneration is not required to be included in an FSG given by an AFS licensee or an authorised representative, respectively. The new notes would clarify that these provisions are relevant to website disclosure information, which if made available would likewise not need to include that information.

Items 22 and 26 would make consequential changes in regulations 7.7.04AA and 7.7.04AB to renumber the existing notes as 'Note 1', as the new notes inserted by items 24 and 28 are 'Note 2'.

Items 29 and 34 would insert a note at the end of subregulation 7.7.05A(1) and regulation 7.7.06A of the Corporations Regulations. These require an FSG given by an authorised representative to include the authorised representative number given by ASIC to the authorised representative (except when the FSG is a personalised FSG to which regulation 7.7.05B applies) and the AFS licensee's licence nu[redacted] s 22(1)(a)(ii) otes would clarify that each requirement is relevant to website disclosure [redacted],

s 22(1)(a)(ii)

which if made available by the representative on their website must include those numbers.

Item 30 would insert a note at the end of subregulation 7.7.05B(1) of the Corporations Regulations. Regulation 7.7.05B applies if an AFS licensee or its authorised representative authorises an individual to provide financial services on behalf of the licensee. In this situation, an FSG given by the authorised individual does not have to include certain information or statements specified in the regulation. The note clarifies these modifications to FSG requirements are relevant to website disclosure information, if made available by the authorised individual.

Items 31 and 32 would insert notes at the end of subregulations 7.7.05C(1) and (2) of the Corporations Regulations. Subregulation 7.7.05C(1) exempts an AFS licensee from having to provide certain information (about financial services to which subsection 941C(6) of the Corporations Act applies, namely services relating to basic deposit products) in an FSG. This exemption is carried through to an authorised representative of the licensee by subregulation 7.7.05C(2). The notes would clarify that these modifications to FSG requirements are relevant to website disclosure information, if made available by the relevant entity.

Requests for further information about remuneration etc

Items 18, 19, 20, 38, 39 and 40 would amend regulations 7.7.04A and 7.7.07A, which provide that a client may request additional details about remuneration or other benefits to what is provided in an FSG, if personal advice will not be given by an AFS licensee or an authorised representative, respectively.

Items 18 and 19 would insert references to website disclosure information after existing references to an FSG in subregulation 7.7.04A(1), to ensure the requirements for the regimes align. Items 38 and 39 would do the same in subregulation 7.7.07A(1).

Item 20 would repeal and replaces subregulation 7.704A(2), to distinguish the timing requirements for when a request for further information must be made depending on whether website disclosure information has been made available or the client has been given an FSG. Item 40 would do the same in subregulation 7.7.07A(2).

The effect of the amended regulations 7.7.04A and 7.7.07A would be:

- The client could request additional information about remuneration or other benefits if the FSG or website disclosure information do not contain particulars of the remuneration or other benefits, the particulars are not ascertainable at the time the information is given or made available to the client, and personal advice will not be given by the providing entity.
- The client's request for additional information would need to be made before a relevant financial service is provided to the client – or if an FSG is given, then the request would need to be made within a reasonable time of being given the FSG and before the service is provided (as is currently the case).
- The additional information would not be part of the FSG or website disclosure information, but would need to contain the particular matters set out in subregulations (3) and (4).

s 22(1)(a)(ii)

[redacted]

Statements that clients can request records of further advice

Under section 943N of the Corporations Act, inserted by Amending Act, an AFS licensee or its authorised representative who makes website disclosure information available must comply with a client's request to give the client a record of further market-related advice or advice to which subsection 946B(7) applies (that being advice that does not recommend the purchase or sale of products), where the advice has been provided but not a record of that advice. An AFS licensee or authorised representative commits an offence if it fails to comply with the request.

Item 42 would insert a new regulation 7.7.10ADA into Division 3, which would substitute a new section 943N of the Corporations Act to replace section 943N inserted by the Amending Act. This would be done under paragraph 951(1)(c) of the Corporations Act, which provides the regulations may modify the operation of Part 7.7 of the Corporations Act (dealing with financial services disclosure including FSGs) by specifying provisions being modified and the way in which they are omitted, modified or varied. Once modified, the Corporations Act would have effect consistent with the modifications in the Regulations rather than the effect it would have on its face.

New regulation 7.7.10ADA would modify the new section 943N such that an AFS licensee or authorised representative would need to comply with a client's request for a copy of "further advice", rather than the request being limited to the two types of advice specified by the original section 943N in the Amending Act.

This would replicate modifications in adjacent regulations which currently apply to FSG disclosure and ensure consumer protections are maintained irrespective of the form of disclosure. The modification would ensure that a client's right to request a copy of a record of further advice would be preserved if the advice provider meets their FSG obligations by making website disclosure information available.

Replicating the modification of this provision through the regulations would align with the existing modifications for the FSG regime and provides consistency across the two disclosure regimes. This would support consistent application of any future updates or amendments.

Items 41 and 43 of the Regulations would make consequential amendments to the note under regulation 7.7.10AAA and note 2 under subregulation 7.7.10AE(3A) of the Corporations Regulations, respectively. Both notes refer to the client's existing right to request a record of further advice under subsections 942B(8) and 942C(8) of the Corporations Act. The items would add a reference to the similar right created by section 943N of the Corporations Act, as modified above, where the statement referring to that right is in website disclosure information.

Replacement of subregulation 7.7.2A(2)

Item 13 would repeal and replace subregulation 7.7.02A(2). The replacement subregulation would be identical to the repealed subregulation in substance; the difference would be that the numbers of the subsections referred to in the subregulation have been amended.

s 22(1)(a)(ii)

Specifically, the repealed subregulation 7.7.02A(2) was made in 2005 to insert new subsections 941C(7A) and (7B) into the Corporations Act, using the modification power in paragraph 951C(1)(c) of the Corporations Act. However, a different subsection 941C(7A) was inserted into the Corporations Act in 2020. Item 13 would resolve the conflict by renumbering the subsections inserted into the Corporations Act by the Corporation Regulations to be subsections 941C (7AA) and (7AB). Item 13 would rely on the modification power in paragraph 951C(1)(c) of the Corporations Act to support this insertion.

Penalty provisions: exemption from notification requirements

Item 11 would amend subregulation 7.6.02A(2) of the Corporations Regulations by inserting new paragraphs 7.6.02A(2)(va), (vb), (vc) and (vd). The effect of this amendment would be that a breach of one of the penalty provisions which are prescribed in those new paragraphs did not need be reported to ASIC as a significant breach of a core obligation, unless other circumstances applied which made it a reportable situation under section 912D. The relevant penalty provisions, subsections 943G(3), 943H(4), 943K(2) and 943L(2) of the Corporations Act, are inserted by the Amending Act to give effect to the website disclosure information regime. These penalties apply where an AFS licensee or its authorised representative, as the case may be, does not where required:

- make website disclosure information available on their website (subsection 943G(3) for financial services licensees and subsection 943H(4) for authorised representatives);
- have authorisation to distribute website disclosure information (subsection 943H(4));
- ensure website disclosure information, or something purporting to be website disclosure information, is readily accessible (subsection 943K(2)); or
- keep website disclosure information, or something purporting to be website disclosure information, up to date including specifying the day on which it was prepared or last updated (subsection 943L(2)).

Penalty provisions: subject to infringement notices

Item 44 would amend subregulation 9.4AB.02(2) of the Corporations Regulations to prescribe additional penalty provisions of the Corporations Act to be subject to the infringement notice regime in Part 9.4AB of the Corporations Act. The relevant penalty provisions, subsections 943G(3), 943H(4), 943K(2) and 943L(2) of the Corporations Act, are inserted by the Amending Act to give effect to the website disclosure information regime and are described above.

In brief, an infringement notice is an alternative to court-based action issued by the regulator for a minor alleged contravention of an offence or civil penalty provision. The person to whom the notice is issued has the option to pay the amount specified in the notice in full, or elect to have the matter heard by a court. Failure to pay is not itself a criminal offence or breach of a civil penalty provision, however if the person pays the amount this affects whether they can be prosecuted for the contravention or have proceedings brought in relation to it (see section 1317DAU of the Corporations Act).

s 22(1)(a)(ii)

Application and transitional arrangements

Item 45 would add regulation 10.52.03 to the Corporations Regulations to provide application arrangements for contraventions of subregulations 7.6.02A(2) and 9.4AB.02(2), as amended by the Regulations, to align with the commencement of the corresponding provisions in the Amending Act. Subregulation 7.6.02A(2) prescribes civil penalty provisions of the Corporations Act of which contravention of is not required to be notified to ASIC, while regulation 9.4AB.02 prescribes civil penalty provisions that are subject to an infringement notice under section 1317DAN of the Corporations Act. Both regulations would be amended by Part 3 of Schedule 1 to these Regulations (see items 11 and 44) to reflect changes made by Part 3 of Schedule 1 to the Amending Act, in which existing civil penalties that apply in relation to FSGs now also apply in relation to the website disclosure information regime. Those Amending Act changes commenced on 10 July 2024.

New regulation 10.52.03 would ensure the changes made by these Regulations to the Corporation Regulations would apply at the same time as the changes made by the Amending Act. This means the amendments made by proposed items 11 and 44 would apply retrospectively.

The retrospective application of the amendments to subregulation 7.6.02A(2) made by Part 3 of Schedule 1 to these Regulations would be beneficial for affected persons as it would ensure that a breach of those prescribed civil penalty provisions did not need to be reported to ASIC in relation to conduct between 10 July 2024 and the commencement of Part 3 of Schedule 1 to the Regulations.

The retrospective application of the amendments made to subregulation 9.4AB.02(2) made by Part 3 of Schedule 1 to these Regulations would ensure that ASIC can issue infringement notices in respect of conduct breaching those prescribed civil penalty provisions even if the conduct occurred before the commencement of item 44. While this empowers ASIC to take enforcement action it would not otherwise be able to take, an infringement notice is an alternative to court-based action for a minor alleged contravention of an offence or civil penalty provision and provides for a proportionate enforcement response. Further, failure to comply with an infringement notice is neither an offence nor breach of a civil penalty provision so this application provision would not retrospectively criminalise conduct. This capacity for ASIC to take proportional enforcement action in respect of conduct occurring both before and after commencement of item 44 would therefore be beneficial to affected persons.

Part 4 – Conflicted remuneration

Part 4 of Schedule 1 to the Amending Act amends Subdivision B of Division 4 of Part 7.7A of the Corporations Act to address recommendation 13.1 and 13.3 of the Review. The current definition of conflicted remuneration in section 963A is repealed and replaced with a new definition, to ensure that monetary and non-monetary benefits given by a retail client are not conflicted remuneration. The new definition provides that a benefit will not be conflicted remuneration if it is given by a retail client to an AFS licensee or its authorised representative in relation to a financial product or financial service provided by the licensee or authorised representative. The new definition of conflicted remuneration clarifies the law to achieve the intended outcome of the conflicted remuneration provisions: to ban benefits given by a product issuer or seller which could reasonably influence financial product [redacted] s 22(1)(a)(ii)

s 22(1)(a)(ii)

Subdivision 1 of Division 4 of Part 7.7A of the Corporations Regulations provides a range of exceptions to conflicted remuneration in relation to benefits given by a retail client. These exceptions are no longer required given they are now captured appropriately in Subdivision B of Division 4 of Part 7.7A of the Corporations Act following the amendments to section 963A and other provisions by the Amending Act. Consequently:

- Item 47 would repeal paragraph 7.7A.11C(1)(d), which provides that a monetary benefit is not conflicted remuneration if it is given to a financial services licensee or its authorised representative by a retail client in relation to information that is given in the course of providing a life risk insurance product to the client.
- Item 49 would repeal paragraph 7.7A.11C(2)(e), which provides that a non-monetary benefit is not conflicted remuneration if it is given to a financial services licensee or its authorised representative by a retail client in relation to information that is given in the course of providing a life risk insurance product to the client.
- Item 50 would repeal paragraph 7.7A.11D(1)(d), which provides that a monetary benefit is not conflicted remuneration if it is given to a financial services licensee or its authorised representative by a retail client in relation to dealing in a life risk insurance product with the client.
- Item 52 would repeal paragraph 7.7A.11D(2)(e), which provides that a non-monetary benefit is not conflicted remuneration if it is given to a financial services licensee or its authorised representative by a retail client in relation to dealing in a life risk insurance product with the client.
- Item 54 would repeal regulation 7.7A.12E, which provides that a monetary benefit is not conflicted remuneration if it is given to a financial services licensee or its authorised representative by a retail client in relation to the licensee or representative dealing in a financial product on behalf of the client.

Items 48 and 51 would make typographical changes to subparagraphs 7.7A.11C(2)(d)(ii) and 7.7A.11D(2)(d)(ii) respectively to reflect the repeals items 49 and 52 would make.

Item 53 would repeals note 2 to regulation 7.7A.12, which provides that a reference in Division 4 of Part 7.7A of the Corporations Regulations to giving a benefit includes a reference to causing or authorising it to be given, as per the former definition of 'doing' an act or thing in section 52 of the Corporations Act (now repealed). As the Amending Act updates subsection 963A(2) of the Corporations Act to clarify that a reference in Subdivision B of Division 4 of Part 7.7A of the Corporations Act to giving a benefit includes a reference to causing or authorising the benefit to be given, which will also apply to Division 4 of Part 7.7A of the Corporations Regulations, the note is no longer necessary.

Item 53 would also repeal note 3 to regulation 7.7A.12. This would ensure consistency with the amendments made by the Amending Act which removed a broadly equivalent note to paragraph 963B(1)(e) of the Corporations Act because of the repeal of paragraph 963B(1)(d) of the Corporations Act.

s 22(1)(a)(ii)

Item 56 would repeal regulation 7.7A.12H, which provides an exception to conflicted remuneration in relation to benefits given to an agent or employee of an Australian authorised deposit-taking institution (ADI) for financial product advice about basic banking products, general insurance products or consumer credit insurance. The repeal of regulation 7.7A.12H would be consistent with the repeal of section 963D of the Corporations Act by the Amending Act and would implement recommendation 13.5 of the Review, that the conflicted remuneration provisions should operate consistently by placing agents and employees of Australian ADI's in the same position as employees of other financial institutions. Proposed transitional arrangements relating to this repeal are described below.

Item 57 would update the prescribed provisions for the purposes of regulation 7.7A.12I of the Corporations Regulations. Regulation 7.7A.12I provides that a benefit given in the circumstances in the prescribed provisions does not become conflicted remuneration purely because it is paid with another benefit. Item 57 would remove references to paragraphs 963B(1)(c) and 963B(1)(d) as prescribed provisions, as these provisions have been repealed by the Amending Act. Item 57 would add paragraph 963B(1)(ba) as a prescribed provision, which relates to benefits given to the AFS licensee or authorised representative in relation to consumer credit insurance. This corrects a missed consequential amendment resulting from amendments of section 963B of the Corporations Act by the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017*.

Items 21, 23, 25, 27, 46, 55 and 58 to 71 would correct cross-references in the Corporations Regulations by replacing references to various paragraphs of section 963C of the Corporations Act with references to paragraphs of subsection 963C(1). These changes would correct errors resulting from amendments of section 963C of the Corporations Act by the *Corporations Amendment (Financial Advice Measures) Act 2016*.

Application and transitional arrangements

Item 72 would add regulation 10.52.04 into the Corporations Regulations, to set out how and when the amendments that would be made by item 56 (repeal of regulation 7.7A.12H) would apply.

The repeal of regulation 7.7A.12H would apply to a benefit given to an employee of an ADI (i.e. an authorised deposit-taking institution) on or after the "deferred start day", being 10 January 2025 (the day 6 months after the commencement of Part 4 of Schedule 1 to the Amending Act), where the benefit was given:

- under an arrangement that was entered into on or after 10 January 2025; or
- under an arrangement that was varied on or after 10 January 2025, where the variation relates to giving of benefits under the arrangement; or
- in other circumstances (that is, not under a formal arrangement) on or after 10 January 2025.

Put simply, the repeal of regulation 7.7A.12H would apply to a benefit given to an employee of an ADI under a formal arrangement entered into or varied, or in other circumstances, from the day that is 6 months after commencement of Part 4 of Schedule 1 to the Amending Act.

s 22(1)(a)(ii)

From that time, an ADI employee could no longer rely on regulation 7.7A.12H to accept a benefit given in relation to basic banking and certain insurance products, and would need to use instead the amended provisions of the Corporations Act and Corporations Regulations to determine whether a benefit is conflicted remuneration.

Inclusion of this application provision relating to ADI employee benefits would reflect the possible existence of employment contracts with remuneration based on volume of sales that rely on the exception currently in regulation 7.7A12H, or other existing contractual arrangements that relate to monetary or non-monetary benefits permitted under that regulation. It is not the intention of this measure to extinguish existing benefits, rights or entitlements on commencement; therefore, it would apply to arrangements entered into on or after commencement of these provisions. Further, the 6 month transitional period allows ADIs time to adjust existing remuneration structures before the commencement of the repeal of regulation 7.7A.12H.

Regulation 10.52.04 would align with section 1708D of the Corporations Act, as inserted by the Amending Act, to provide consistent arrangements.

Part 5 – Insurance commissions

Item 73 is a minor amendment to reflect the addition of subregulation (2) by item 74.

Item 74 would add a new subregulation 7.7A.12G(2) to clarify how regulation 7.7A.12G interacts with new section 963BB of the Corporations Act, introduced by the Amending Act, and relates to informed consent to insurance commissions and conflicted remuneration.

Regulation 7.7A.12G provides that a benefit is not conflicted remuneration if the benefit is given in relation to a general insurance product.

Section 963BB inserted by the Amending Act provides that where an AFS licensee or its authorised representative provides or is likely to provide financial product advice to a retail client that is personal advice (not general advice), a monetary benefit given in connection to the issue or sale of relevant products is exempt from the ban on conflicted remuneration under paragraphs 963B(1)(a), (b) and (ba), only when the client's informed consent has been obtained. Relevant products covered by those paragraphs are a general insurance product, a certain life risk insurance product, and consumer credit insurance.

New subregulation 7.7A.12G(2) would clarify that section 963BB applies to regulation 7.7A.12G in the same way as it does to paragraph 963B(1)(a) of the Corporations Act (which is similar to, but narrower than, regulation 7.7A.12G). That is – a benefit given to an AFS licensee or its representative in relation to the issue or sale of a general insurance product to a retail client, where personal advice is provided to the client, would not be conflicted remuneration if the client gives informed consent. This would mean that, where a retail client receives personal advice, an AFS licensee or its authorised representative can receive commissions when the client purchases a general insurance product if the client provides informed consent before the issue or sale of the product.

s 22(1)(a)(ii)

The application of regulation 7.7A.12G to benefits given to an AFS licensee or its representative in relation to the issue or sale of a general insurance product where general advice is provided would not be altered. That is, where an AFS licensee or its authorised representative provides financial product advice to a retail client that is general advice, a benefit given in relation to the issue or sale of general insurance products would continue to be exempt from the ban on conflicted remuneration under paragraph 963B(1)(a). Informed consent of the client is not required to be obtained under these circumstances.

Item 75 would correct a paragraph reference in paragraph 9.4AB.02(2)(j). Paragraph 9.4AB.02(2) provides certain civil penalty provisions of the Corporations Act are subject to an infringement notice, including section 963K as prescribed by paragraph 9.4AB.02(2)(j). The general prohibition of conflicted remuneration is found in section 963K, specifically in subsection 963K(1) (the Amending Act inserts a new subsection 963K(2) to provide an exception to subsection 963K(1)). The amendment in item 75 would reflect this numeric change, and ensure that contravention of the prohibition continues to be subject to an infringement notice.

Application and transitional arrangements

Item 76 would add regulation 10.52.05 to the Corporations Regulations to provide application arrangements for the amendments made by items 73 and 74 to regulation 7.7A.12G. The amendments to regulation 7.7A.12G would apply to benefits given in relation to the issue or sale of general insurance products on or after the commencement of Part 5 of the Amending Act (as described above). Aligning the application of the amendments made to regulation 7.7A12G with that of the commencement of Part 5 of the Amending Act would ensure that the new informed consent requirements for insurance commissions in section 963BB as inserted by the Amending Act would apply to all relevant insurance products from the same date. Further, and consistent with the Amending Act, this alignment would effectively provide an appropriate transition period to assist AFS licensees and authorised representatives to develop a workable approach to obtaining consent.

The amendments would not apply to benefits given in connection with a general insurance product that was issued or sold before the commencement of Part 5 of the Amending Act. The amendments also would not apply to benefits given in connection with a general insurance product where that product is a renewal of a general insurance product that was issued or sold before commencement of Part 5 of the Amending Act. This approach would account for the fact that it is common for general insurance providers to renew a client's cover on an annual basis without necessarily meeting with the client, so would reduce the risk that a client could be left uninsured if the provider was in fact required to wait for that consent from the client prior to renewal.

s 22(1)(a)(ii)

[redacted]