Law Council
OF AUSTRALIA

Legal Practice Section

21 April 2026

The Treasury
Langton Crescent
Parkes ACT 2000

To whom it may concern

Superannuation advertising ban—draft regulations

We refer to Treasury's consultation in connection with draft *Corporations Amendment (Ban on Advertising Superannuation Funds During Onboarding) Regulations 2026*.

This submission has been prepared by the Superannuation Committee of the Legal Practice Section of the Law Council (the **Committee**). The Committee welcomes the opportunity to make a submission to Treasury on the draft regulations.

As you may recall from the Committee's previous submissions, the Committee believes that superannuation laws should be clear, equitable and demonstrably fair, and should be drafted in terms that are suited to achieving the relevant policy objectives.

The Committee has proposed several technical modifications to the draft regulations that are marked up below. These changes are intended to align the drafting with the policy objectives articulated in the accompanying explanatory statement, to address unintended anomalies, and to ensure that the requirements are capable of being complied with by persons to whom the draft regulations would apply.

7.8.26 Conditions and disclosure requirements for certain MySuper products during onboarding

(1) For the purposes of paragraph 992AB(4)(f) of the Act, the following conditions are prescribed:

(a) the advertisement or statement is clearly distinguishable from information about any other superannuation product that is shown to the employee:

(i) during the period described in paragraph 992AB(1)(b) of the Act; and

(ii) by the person making, or causing, the advertisement or statement or by any associate of that person;

(b) the advertisement or statement does not show information about the MySuper product with materially greater prominence than information about any: [See Note 1 below for explanation]

(i) default fund for the employer and employee; or

(ii) stapled fund (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) for the employee.~~;~~

that is shown to the employee with that advertisement or statement by the person making, or causing, the advertisement or statement or by any associate of that person.~~:~~ [See Note 2 below for explanation]

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(iii) ~~during the period described in~~ paragraph ~~992AB(1)(b) of the Act; and~~ ~~[~~See Note 2 below for explanation~~]~~

~~(iv) by the person making, or causing, the advertisement or statement or by any associate of that person~~. ~~[~~See Note 3 below for explanation~~]~~

The Committee has no comments on the draft regulations that have not been reproduced above.

The above changes may appear subtle but are important for the following reasons.

- **Note 1:** This change would make it clear that immaterial differences in prominence would not constitute a contravention.

- **Note 2:** The Committee's proposed changes to reg 7.8.26(1)(b) would make it clear that the relevant person only has to compare the prominence given to the MySuper product in their advertisement or statement with the prominence given to the default fund and stapled fund in statements made with that advertisement or statement.

  Without this change, the provision could be construed as requiring the relevant person to compare the prominence given to the MySuper product with the prominence given to the default fund and stapled fund on all other occasions during the period that was previously referred to in the original reg 7.8.26(1)(b)(iii). It should be borne in mind that the relevant period would typically be longer than 30 days (for example, if a person accepts an employment offer, serves out a four-week notice period, takes a short holiday before commencing employment, and eventually has their first superannuation contribution paid by their new employer a fortnight after commencing employment). Such a requirement would be impractical to comply with and, in any event, would appear to be an unintended consequence, based on the comments in the accompanying explanatory statement.

  On this interpretation, it may not be possible for relevant persons to ensure or monitor their own compliance with the regulation by reviewing and signing off on (say) specimen screenshots of what would be viewed by new employees. Reference may have to be made to other advertisements and information given to new employees on other occasions during the relevant period.

  The Committee's proposed insertion in reg 7.8.26(1)(b) avoids this ambiguity by focusing on the information that is shown with the advertisement or statement. The Committee also recommends deleting reg 7.8.26(1)(b)(iii), noting that is already clear from section 992AB that the section and the proposed regulation would apply to all relevant advertisements or statements occurring during that period.

- **Note 3:** Without this deletion, a person who caused an advertisement for a MySuper product (for example, a trustee of a superannuation fund) may be required to compare the prominence given to their MySuper product in their advertisement with the prominence given to the default fund and stapled fund by either:

  (i) themselves, by reason of them being the person who caused the advertisement which must comply with the regulation - such a requirement would be reasonable; or

(ii) by the person who actually makes the advertisement or statements (for example, the provider of the employee onboarding platform)—such a requirement is likely to be problematic.

It would be neither fair nor practicable to expect a trustee of a superannuation fund to be aware of statements made by the provider of the employee onboarding platform on separate occasions without their knowledge. This is presumably an unintended consequence and should also be addressed via a change along the lines proposed by the Committee—specifically, by deleting proposed reg 7.8.26(1)(b)(iv). Note that it is already clear from section 992AB that the section and proposed regulation would apply to the person who makes or causes the relevant advertisement or statement.

The Committee would welcome the opportunity to discuss this submission. In the first instance, please contact the chair of the Superannuation Committee, Mag Girgis [redacted].

Yours sincerely



Greg McIntyre SC
Section Chair