# Employers: what you need to know about Your Future Your Super and 'stapling'

Catalyst | June 2021


**The 'stapling' of employees' superannuation accounts to individual workers as they move between jobs is a key element of the Your Future Your Super (YFYS) measures announced by the Federal Government. As an employer, this may have significant impacts for your superannuation and insurance arrangements.**

What does the stapling part of the draft legislation mean? If your employee does not nominate a fund at the time they start working with you, and they have an existing fund, you will be required to pay their superannuation contributions to that fund, rather than your company's default fund. You'll be able to obtain information on your employee's 'stapled' fund from the ATO online.

Only employees new to the workforce, without an existing super account, and who do not make a decision regarding a fund, will have their employer contributions paid into your nominated default fund.

## How will onboarding processes be impacted by the changes?

We now have more certainty about how the stapling changes are likely to impact the onboarding process for new employees, thanks to the draft regulations and the Senate Economics Committee report into the YFYS bill.

At the most fundamental level, the existing Superannuation Guarantee (SG) Choice of Fund rules generally involve a two-step onboarding process:

1. If an employee chooses a fund (and the fund can accept the contributions), SG contributions are paid to that fund.
2. If the employee does not choose a fund, SG contributions are paid to the employer's default MySuper product.

The Standard Choice Form produced by the ATO is generally used for this purpose.

The YFYS changes will introduce a new step in the middle of this process, which anticipates individuals being stapled to a fund for their working life:

1. If an employee chooses a fund (and the fund can accept the contributions), SG contributions are paid to that fund.
2. **NEW** - If the employee does not choose a fund, the employer will log into ATO online services and identify if a stapled fund exists for the employee – this being a fund that can accept their new employer's contributions. If such a fund is identified, this is where you will be required to pay the employee's SG contributions.
3. If the employee does not choose a fund and the ATO cannot identify a stapled fund for that person, to which you can make contributions, then you will pay the SG contributions into your organisation's default MySuper product.

Willis Towers Watson

## Action items

The administrative burden for employers in the onboarding process will be reduced if your employee makes a choice of fund at that time. If that doesn't occur, you may consider:

- What information you can provide to assist employees navigating a choice of fund, rather than the default environment. Ensure you don't inadvertently provide financial product advice. You can only give factual information to your employees to assist them in making a choice.
- What changes might your onboarding/payroll processes need? If your new employee doesn't make a choice, the new step of referring to the ATO for the stapled fund cannot occur until the individual has commenced employment – it is not yet clear whether the ATO will provide details on an individual's stapled fund from the date an individual accepts an offer of employment or from their first day on the job.

## Will workplace determinations and enterprise agreements override the new stapling legislation?

The role of workplace determinations and enterprise agreements in specifying choice of fund for employees will be diminished under YFYS and is likely to become redundant based on the draft stapling requirements.

Changes to legislation in 2020 already meant that workers could not be forced into an employer's chosen super fund under workplace determinations and enterprise agreements made on or after 1 January 2021. However, the Explanatory Memorandum to the YFYS Bill takes this one step further.

It explicitly states that for employees starting employment on or after 1 July 2021, you will not be able to make contributions on behalf of your employee in accordance with a workplace determination or enterprise agreement made before 1 January 2021, and still comply with the Choice of Fund rules. The only exceptions will be that either the employee has specified that fund as their chosen fund, or the employee does not choose a fund and does not have a stapled fund.

## Will my organisation still need a default fund?

To comply with the requirements of the draft legislation, the answer to this is yes – for most employers. From our experience we know that 50% (or more) of employees are members of an employer's default fund and, going forward, it is possible that a significant number of current employees will remain stapled to their existing fund when they change jobs.

Therefore, it is crucial to ensure your default fund is the right one for your employees, because it will continue to play a very important role in your employee benefits program. There are several reasons for this:

- **Increased scrutiny**

We know that the complexity of the system, among other reasons, means the level of disengagement from your employees with their superannuation can be high, however, interest from your employees in their fund may increase when the SG rate rises on 1 July 2021.

The government is also actively trying to increase member engagement by encouraging choice and increasing the visibility of fund performance. For example, the ATO is introducing an online tool to help consumers compare the performance of available superannuation funds.

Moving from a default to a choice environment will increase funds' competition for members. Funds will be trying to drive increased member engagement to ensure that they are well positioned for their future growth strategies.

Ultimately, this means that there will be increased scrutiny on funds; your organisation will want to demonstrate to your employees that your default fund is fit for purpose.

- **Fund performance**

The investment performance of the fund to which your employee is stapled will have a significant impact on their retirement savings outcomes. The YFYS legislation seeks to address this, at least to some extent, through the introduction of an annual performance test and identification of underperforming funds. What constitutes an underperforming fund and the notification requirements will be prescribed in the final legislation and associated regulations, but it will be based on net investment returns relative to a prescribed benchmark that takes into account the fund's strategic asset allocation.

Members will have to be advised by fund trustees if they are in an underperforming fund. Further, the fund will not be permitted to accept new members if the performance test is failed in two successive years. Clearly employers will not want their default fund to be an underperforming fund.

## Action items

- Consider whether your current default fund remains appropriate and fit for purpose.
- What educational tools will your current default fund provide as the focus moves to an individual choice environment?
- How likely is it that your current default fund may underperform?

## Your employees' insurance cover

Australian employers have traditionally relied on employees having insurance cover within their superannuation fund. We know some employers have set up insurance arrangements outside of super, for salary continuance insurance cover in particular.

However, since choice of fund was introduced in 2005, there has been a gradual increase in employees electing a fund other than the employer's default fund. That means many employers are uncertain as to what death and disablement insurance their employees have in place.

The Protecting Your Super (PYS) and Putting Members' Interests First (PMIF) legislation introduced over the last couple of years has heightened this fragmentation of insurance and resulted in loss of cover for some younger and low balance employees. Insurers reassessed their group insurance arrangements given the changed risk pool and have responded to these issues with some significant premium increases and design changes.

Funds that find their membership base eroding from stapling may see their premium rates increase, or even find it harder to get cover. Ironically, the same might also be true for funds that are considered attractive, if the result of more engagement is increased anti-selection and worsening claims experience, or if the fund's actual occupational profile unexpectedly changes due to the impact of stapling over time. This uncertainty over who will be in the risk pool may also lead to lower levels of automatic cover (without health evidence) being offered and / or more use of pre-existing condition clauses, both of which may erode the level and quality of cover for individuals.

The risk of someone being stapled to a fund that doesn't insure or provide appropriate cover and pricing for their new occupation has also been much publicised.

## Action items

- Ensure your employees understand the importance of insurance and encourage them to actively monitor the level of cover in place and the cost of that cover. This is particularly relevant if your organisation operates in a higher risk sector and also for your employees who are not members of your default fund.
- Consider financing insurance premiums in addition to SG contributions through an insurance-only superannuation solution (to maintain the tax advantages of Death and TPD inside super) or outside of super, as is common for Group Income Protection insurance. This may help you get better pricing and terms and conditions, tailored to occupations, than can be offered by "standard" super funds. Legal and tax advice may be needed before adopting the latter approach.

## Summary

Under the draft YFYS legislation, most employers will continue to need to have a default fund, but a new employee will only be defaulted into it if:

- the employee does not choose their own fund and
- after you check with the ATO, the ATO advises that the employee does not have a stapled fund, or the stapled fund won't accept your contributions.

While these changes may see less new employees join your default fund, it will continue to play an important role in the employee benefits program – current employees may be 'stapled' to it for their working life. So it is important to ensure that your default fund, including the insurance provided, is the right one for your employees.

**For further information please contact:**

**Andrea Piaia**
Director, Retirement
T +61 3 9655 5114
M +61 411 195 608
E andrea.piaia@willistowerswatson.com

**Jackie Downham**
Director, Retirement
T +61 2 9253 3186
M +61 434 070 578
E jackie.downham@willistowerswatson.com

## About Willis Towers Watson

Willis Towers Watson (NASDAQ: WLTW) is a leading global advisory, broking and solutions company that helps clients around the world turn risk into a path for growth. With roots dating to 1828, Willis Towers Watson has 45,000 employees serving more than 140 countries and markets. We design and deliver solutions that manage risk, optimise benefits, cultivate talent, and expand the power of capital to protect and strengthen institutions and individuals. Our unique perspective allows us to see the critical intersections between talent, assets and ideas — the dynamic formula that drives business performance. Together, we unlock potential. Learn more at willistowerswatson.com.

willistowerswatson.com/social-media



**willistowerswatson.com.au**

Willis Towers Watson