

Super Update

November 2021

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- maximise expected retirement income over the period of retirement
- manage longevity, investment, inflation and any other risks to the sustainability and stability of retirement income over the period of retirement and
- have flexible access to expected funds over the period of retirement.

There are a number of determinations that trustees will have to make as part of their retirement strategy, as they will be included in the covenant. These include the class of members who are to be classified as retired or approaching retirement for the purposes of the strategy – for example, a trustee may determine that anyone over a particular age will be classed as approaching retirement. Any members who are eligible for a non-commutable defined benefit pension on retirement can be excluded from the retirement income strategy. The determinations will also have to include the meaning of “retirement income” for the purpose of the strategy – it will have to include income from the super fund and from the age pension but may also include other income.

Retirement income covenant – draft legislation released

On 27 September 2021 Treasury released draft legislation for a retirement income covenant that will codify an obligation for trustees to have a retirement income strategy which outlines how they plan to assist their members meet retirement objectives.

Trustees will be required to formulate, review regularly and give effect to a written retirement income strategy. The strategy will need to cover members who are retired or are approaching retirement, and will have to address how the trustee will assist those members to achieve and balance the following objectives:

The Explanatory Materials accompanying the legislation indicate that trustees may use cohort analysis to identify sub-classes of members for whom separate strategies may be developed. Examples of factors that could be used in this process include account balance, expected eligibility for the Age Pension at retirement, single/couple status, homeowner status and whether the member is carrying a mortgage debt at retirement. However, there are no proposed changes to the current financial advice laws in the draft legislation. Trustees will therefore be required to operate within the existing financial advice framework. The government considers that trustees can fulfill the requirements of the covenant and create effective retirement income strategies without providing personal advice.

A summary of the strategy will have to be published on the public section of the fund's website. The Explanatory Materials state that trustees may have two strategy documents, one detailed and for internal use and a published summary that is freely available and easily accessible to the public. The summary must be freely available at all times, even while the strategy itself is under review, so the public can make informed choices about the fund at any time.

There is also guidance on the information-gathering requirement in the Explanatory Materials. Given the general nature of the retirement income strategy, trustees will only be required to gather sufficient information to form a broad understanding of members in order to identify the types of assistance that could be offered to them to achieve and balance the three objectives.

Finally, the legislation includes a proposed requirement for trustees to document in their retirement income strategy:

- each determination made by the trustee for the purposes of the strategy and the reasons for the determination
- each other decision made by the trustee in formulating, reviewing or giving effect to the strategy that the trustee considers significant, and the reasons for the decision
- the steps taken to gather the information that informed the formulation of the strategy, and the reasons for taking those steps.

Consultation on the draft legislation closed on 15 October. Subject to the passage of the legislation, the covenant will take effect from 1 July 2022.

As expected, the covenant legislation is 'principles based', which provides considerable flexibility for trustees to develop a retirement income strategy that is appropriate for their members. Those funds which have been working on the retirement phase arrangements for their members will be well placed to document a strategy in line with the legislative requirements. Nonetheless, even for these funds, there will be aspects of the strategy that may require more detailed consideration and resourcing. For example, compiling data to support any cohorts specified, as envisaged by the Explanatory Materials, may be challenging given the current sparsity of relevant public data. Care will also need to be taken in developing retirement income strategies for specific cohorts without tripping over the constraints of the financial advice laws. While trustees will need to navigate these aspects initially, we hope that Treasury will assist over time by making public relevant (deidentified) data from agencies such as the ATO or Centrelink, and through the Quality of Advice review which is scheduled for 2022.

Proposed changes to financial reporting and auditing requirements

In August, Treasury released draft legislation that will largely extend to superannuation funds the existing financial reporting and auditing requirements for public companies in the Corporations Act. If the legislation is passed as drafted, it will apply for financial years (or fund years of income, for those funds with substituted accounting periods) commencing on or after 1 July 2022.

Trustees will have to prepare a financial report for each half-year (defined as the first six months of the fund's financial year) and full financial year. Each report will need to be audited and lodged with ASIC within prescribed time frames.

Both full year and half-year reports will have to include:

- the financial statements required by the accounting standards
- the notes to the financial statements required by the accounting standards (and in the case of the half-year report any notes required in regulations)
- if the fund had one or more sub-funds for all or part of the financial year, financial statements and notes for each sub-fund
- a directors' report
- a declaration by the directors about the financial statement and notes.

The obligation to report financial information for sub-funds is intended to ensure that financial information about the fund and each sub-fund is subject to public scrutiny and compliance monitoring by ASIC. The usual definition of a sub-fund will apply – a part of a fund that has separately identifiable assets and beneficiaries and where the interests of the beneficiaries of that part are determined by reference only to rules governing that part.

The directors' report for the full financial year will need to be signed and dated by a director and will have to include:

- general information about the operations and activities of the fund, similar to that required to be included in public company annual reports
- a copy of the auditor's independence declaration
- under the heading "Remuneration report", details of the remuneration of key management personnel of the fund and any other content to be prescribed in regulations

- details of any approved extension of the auditor rotation requirements and, under the heading “Non-audit services”, prescribed details of any payments made to the auditor for non-audit services.

The directors’ report for the half-year will include a review of the fund’s operations during that half-year and the result of those operations, names of all directors during the year and a copy of the auditor’s independence declaration. It will need to be approved by a resolution of the directors and be dated and signed by a director.

There is some proposed relief amidst the new requirements. The existing disclosure requirements in section 29QB of the SIS Act will be repealed to avoid duplication, although the supporting SIS Regulations will be moved to the Corporations Act. Unlike public companies, trustees will not have to provide copies of the reports directly to members (electronically or in hard copy), notify members that they are available, give members a choice as to how they receive reports, or provide concise reports in lieu of full financial reports. However, the full financial year report (but not the half-year report) will need to be publicly available on the fund’s website. Both the full and half-year reports will also need to be given to a concerned person (as per the existing definition) on request.

The existing penalties that currently apply to various offences relating to financial reporting and record keeping will be strengthened, so that they are the same as those that apply to companies under the Corporations Act. Some offences that are currently fault liability/strict liability offences will become strictly liability only.

Consultation closed on the draft legislation on 8 September 2021.

Legislative update

The long-awaited Your Future Your Super regulations were finalised on 5 August 2021. There were three separate legislative instruments registered, separately covering the underperformance test, stapling and “accountability” – the latter largely covering the best financial interests duty.

On 24 September 2021 Treasury released a round of miscellaneous amendments to Treasury portfolio laws for consultation. Included in this round were very long-awaited regulations to exempt super funds from having to disclose long term returns on certain periodic statements, including all exit statements. This exemption has been effected since July 2010 by ASIC instrument CO 10/630. Consultation on the draft amendments closed on 29 October 2021.

Treasury has also released a consultation paper on whether occupational exclusions are necessary or appropriate in relation to default death and TPD insurance provided in MySuper products. The review will cover the following two practices:

- occupational exclusions that affect automatic acceptance of default cover – which can impede new MySuper members from getting default cover
- occupational exclusions that are applied when individuals change jobs – which can lead to the loss of default cover.

Interestingly, the consultation paper notes preliminary Treasury analysis finding that nine of the top 10 largest MySuper products by assets do not have occupational exclusions for default life and TPD insurance. Consultation closed on 14 October 2021.

APRA finalised cross industry Prudential Standard *CPS 511 Remuneration* on 27 August 2021. Commencement for superannuation trustees will be phased in:

- for significant financial institutions from 1 July 2023 – for superannuation a significant financial institution is one with assets of at least \$30 billion, or total assets across all funds under trusteeship of at least \$30 billion in the case of a trustee that operates more than one fund
- for other superannuation trustees from 1 January 2024.

On 29 September 2021 APRA released draft revisions to Prudential Standard *SPS 530 Investment Governance*. The draft amendments include a number of enhancements to valuation practices, stress testing and liquidity management practices, as well as enhancements based on APRA’s recent thematic review of unlisted asset valuation practices. Consultation on the draft amendments closes on 16 February 2022, with APRA intending that the final version will commence on 1 January 2023.

APRA has also released a letter to trustees on proposed updates to Prudential Standard *SPS 250 Insurance in Superannuation*. The letter confirms that APRA will proceed with the requirement for independent certification for related party arrangements as included in the January 2021 draft of the prudential standard. However, following industry concerns, APRA will not proceed with independent certification of what APRA described as “priority and privilege” arrangements. Instead, APRA now proposes the following:

- There will be a “reserve power” in the prudential standard for APRA to require a trustee to obtain an independent certification even if it is not required under the related party provisions. This is likely to be used only in limited situations
- Trustees’ Insurance Management Frameworks (IMFs) will need to be expanded to include consideration of any contractual terms and business practices that may indicate conflicts and/or priority and privilege
- The independent comprehensive IMF review every three years will be required to assess whether there are any such terms or practices with respect to insurance arrangements, and to assess the appropriateness of these terms and practices, and whether they are in the best financial interests of beneficiaries
- Trustees will be required to consider whether any priority and privilege provisions in insurance arrangements are affecting the insurance outcomes for members, as reflected in the Business Performance Review and annual outcomes assessment in Prudential Standard *SPS 515 Strategic Planning and Member Outcomes*. This prudential standard is expected to be reviewed by APRA in 2022.

APRA expects to issue the final prudential standard and a revised version of *SPG 250 Insurance in Superannuation* before the end of 2021, with effective dates for both documents of 1 July 2022.

ASIC finalised updates to two Regulatory Guides:

- *RG 78 Breach reporting* was released on 7 September 2021, with a commencement date of 1 October 2021
- *RG 38 The hawking prohibition* was released on 24 September 2021 – it has been updated for legislative changes made in response to the Financial Services Royal Commission which commenced on 5 October 2021.

News in brief

APRA quarterly superannuation statistical publications released

Highlights of APRA’s June 2021 *Quarterly Superannuation Performance* publication, issued on 24 August 2021, included the following:

Table 1

	June 2020 (\$ billion)	June 2021 (\$ billion)	Change
Total superannuation assets	\$2,880.2	\$3,303.2	+14.7%
Total APRA-regulated assets	\$1,930.2	\$2,262.7	+17.2%
<i>Of which: total assets in MySuper products</i>	\$736.9	\$903.0	+22.5%
Total self-managed super fund assets	\$741.9	\$822.0	+10.8%

APRA noted that there was a 14.7 per cent increase in the value of total superannuation assets over the 12 months to 30 June 2021 due to strong investment performance and positive contributions growth. Benefit payments declined 5.5 per cent for the year. Over this period, lump-sum payments (\$55.8 billion) declined by 5.3 per cent, and pension payments (\$38.6 billion) declined by 5.8 per cent, which represents normalisation to pre-Early Release Scheme levels.

APRA’s MySuper statistical publication for the June 2021 quarter was released on 31 August 2021. This report is issued on a product-by-product basis and APRA does not report overall summary statistics.

APRA also released the results of the first MySuper performance test on 31 August. Of the 80 MySuper products assessed, 13 failed, although four of those that passed had less than five years of performance history and so were excluded from the test rather than passing it.

A guide to key changes

The dates that follow were correct as at the time of publication of this edition of *Super Update*.

Table 2

Date	Change
1 Nov 2021	Commencement of YFYS stapling laws applicable to new employees whose employment starts on or after this date.
31 Dec 2021	Current first reporting date for portfolio holdings disclosure.
1 Jan 2022	Commencement date of prohibition on trustees using fund assets to pay legislative penalties.
1 Jul 2022	Next scheduled increase in SG (to 10.5%).
1 Jul 2022	Start date for application of shorter PDS regime to multi-funds, platforms and hedge funds.
1 Jul 2022	Start date for performance tests for certain Choice investment options.
1 Jul 2022	Commencement of new advice fee rules (for existing fee arrangements prior to 1 July 2021).
1 Jul 2022	Proposed start of first reporting period for new financial reporting obligations for super funds.
30 Sep 2022	Final date for <i>RG 97 Disclosing fees and costs in PDSs and periodic statements</i> to apply to PDSs.
1 Jul 2023	Start date for publication of product dashboard for certain choice products.
1 Jul 2023	Commencement of new advice fee rules (for existing fee arrangements prior to 1 July 2021).
30 Sep 2022	Final date for <i>RG 97 Disclosing fees and costs in PDSs and periodic statements</i> to apply to PDSs.
1 Jul 2023	Start date for publication of product dashboard for certain choice products.
1 Jul 2023	MySuper product dashboard to be included in periodic statements.
1 Jan 2024	Commencement of section 29QC of the SIS Act.
1 Jul 2024	Start date for website disclosure of certain information relating to employer-sponsored sub-plans.

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