



Super Update

July 2022

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New relief and guidance for retirement estimates and superannuation calculators

ASIC has finalised its updated relief and guidance on retirement estimates and superannuation calculators. A new instrument, ASIC Corporations (Superannuation Calculators and Retirement Estimates) Instrument 2022/603, was made on 30 June and a new Regulatory Guide, RG 276 Superannuation forecasts: Calculators and retirement estimates, was released on 5 July. There is a six month transition period to the new relief — trustees can continue to rely on the existing relief until 1 January 2023. All superannuation forecasts must be compliant with the new relief from that date if trustees wish to continue to rely on the relief.

As expected, ASIC has expanded the existing guidance and relief to cover "interactive retirement estimates". ASIC defines these as a retirement estimate provided through an interactive tool that allows members to input or change certain assumptions. It differs from a superannuation calculator in that the default assumptions are based on data a trustee has on the member (rather than using generic defaults).

Under the new relief there are important changes to both the disclosure requirements and the assumptions that are to be used. The disclosure will now be principles-based rather than prescribed, and providers will need to clearly and prominently state:

- the purpose and limitations of the calculator or estimate
- the impact of any significant limitations of the calculator or estimate
- the assumptions, along with explanation of why the assumptions (unless inputted or changed by the user) are reasonable for the purpose of working out the calculation or estimate
- the present value of the calculation or estimate, which must be identified as the present value
- that the calculator or estimate is not intended to be relied on for the purposes of making a decision in relation to a financial product and that users should consider obtaining licensed advice before making any financial decisions.

The most significant changes to the assumptions are:

- There are now prescribed inflation assumptions for calculating values in today's dollars for both retirement estimates and calculators — these must be 4 per cent per annum in the accumulation phase and 2.5 per cent per annum in the retirement phase
- The default drawdown period will now be to age 92 years, with different defaults where the member is already retired or aged over 67 or where the drawdown period would otherwise be less than five years
- Trustees will now be permitted, but not required, to include age pension amounts in both static and interactive retirement estimates, with standardised default assumptions about the age pension for static estimates and trustees permitted to set their own reasonable default age pension assumptions in calculators and interactive estimates
- Trustees will be able to set their own reasonable default assumptions for both future contributions and insurance premiums, and these can be based on the member's current situation (rather than what was paid in the previous year).

Confidence levels and ranges will now be permitted for interactive retirement estimates. RG 276 includes guidance on how providers can reduce the risk of misleading members when presenting risk measures alongside a superannuation calculator or interactive retirement estimate.

Retirement estimates will now be able to be given to members in the accumulation phase who are over age 67, and both calculators and interactive retirement estimates will be able to be given to members in the retirement phase (excluding members receiving a transition to

retirement income stream). The general relief is not available for defined benefit members, but ASIC has encouraged trustees to apply for individual relief if they want to provide retirement estimates to such members. Retirement estimates cannot be provided to members in the accumulation phase whose account has been inactive for 16 months or more, or whose account balance is less than \$6000.

Calculators will not be permitted to advertise or promote a specific financial product, and retirement estimates will not be permitted to advertise or promote a specific financial product other than to the extent necessary to actually provide the estimate itself.

We view the changes in the new relief, and the six month transition period, as welcome developments. We encourage trustees to begin to review their calculators and retirement estimates if they wish to continue to rely on the relief after 1 January 2023.

Performance test changes and guidance

On 7 July the government announced that it was suspending the operation of the performance test for this year other than for MySuper products. After the MySuper test has been conducted, Treasury will review the operation of the test to ensure the laws do not have any significant unintended consequences for MySuper products and to assess how the test should be applied to other products.

On 24 June 2022 ASIC released Report 729 setting out the results of a review of trustee communications following last year's performance test for MySuper products. The review covered a sample of 30 trustees, including trustees of all 13 products that failed the performance test in 2021.

The review found that trustees whose products failed generally complied with the legal obligations to notify their members of the failed test and to disclose the failed test on their website. However, ASIC had significant concerns with the communication strategies of some trustees, which it considered may have risked confusing or misleading members about their product's performance. The review suggested that often the primary aim of trustees whose product failed the test was to retain members, even if this involved using communication strategies that potentially undermined good decision making by members. Some concerns were also identified in relation to trustees whose product only just passed the test. ASIC obtained corrective actions from six trustees who failed to prominently disclose the test result failure on the homepage of their website or used unclear language to identify the test.

Concerns identified by ASIC included:

- publishing the MySuper product's test failure on a webpage less likely to be visited by people interested in the product
- highlighting other performance measures that were more favourable in preference to the performance test result, such as recent positive past performance figures or returns against inflation targets
- criticising aspects of the test to suggest it was not relevant to the particular product rather than concentrating on why the trustee had been unable to meet the test parameters and how this affected the test result.

Report 729 contained a number of examples of areas of concern identified by ASIC. It also included some discussion on performance test communications and fund mergers. ASIC considers that trustees must not use a pending merger to downplay the importance of a failure of a product to pass the performance test for members. The report stated that part of the process of a merger itself involves notification of members ahead of the merger occurring to enable them to decide whether to choose another superannuation fund. Trustees must therefore not assume that once a merger is planned a member's right to choose another fund becomes unimportant.

ASIC received four requests for relief from the performance test disclosure requirements last year, all relating to funds that were in the process of merging with another fund. Only one of the funds received relief, and in this case the report states that the merger was to occur (and did occur) a few weeks after the test results were released. There was a very restricted time from the notification date for members to move funds before the merger occurred, so ASIC considered that there was a net regulatory benefit in deferring the notification, as the information in the notice would shortly be irrelevant to the member. In general, ASIC considers that even if a merger is planned, members should be given the information they need to make their own decision.

ASIC has clarified that members must receive the underperformance notice within 28 days of APRA giving the failure notice to the trustee unless a later date is given to the trustee by APRA or ASIC. The form of the notice is prescribed by law and trustees should not change it. When inserting the variable information, the report states that trustees should use account balances calculated at the date of the letter and fees for the previous financial year and should exclude insurance fees.

Updates to disclose that the test has been failed for a product must be loaded to the fund website as soon as the notification is received from APRA. There is no safe harbour period for this disclosure. ASIC considers that as trustees at risk of failing had already been contacted by APRA, they should have been well prepared to update their websites by the time the final notice is received.

Finally, APRA released some new FAQs on 15 June confirming arrangements for this year's performance test. Trustees will need to submit any data by 15 August if they want it to be used for the test. They will be notified of the test results prior to them being published by APRA on 31 August. APRA also confirmed that if a new MySuper authorisation has been granted to a trustee under the "material goodwill" provisions in SIS, the performance history of both products will be combined by APRA for the purpose of the performance test.

APRA expects trustees of MySuper products that might score a second consecutive fail result this year to have processes in place to ensure that they prevent new members from holding the product on and from the day the second fail notification is received. Any contributions received in respect of individuals who didn't hold the product the day before the fail notification is received will need to be returned. APRA is encouraging trustees to be engaging closely with employers, promoters and other key stakeholders to ensure they are aware the product may be closed if it fails the test again this year.

Given the various concerns that have been raised around the performance test, the review of its operation is a sensible move. We would encourage trustees whose MySuper product is at risk of failing the test this year to consider ASIC's report prior to finalising their performance test communications.

Legislative update

In addition to its updated relief for retirement estimates and calculators, a number of other ASIC relief instruments were remade in June 2022, all with expiry dates of 1 October 2027, including:

- ASIC Corporations (In-use Notices for Employer-sponsored Superannuation and Superannuation Dashboards) Instrument 2022/496, which sets out, among other things, the relief for trustees from having to publish Choice product dashboards or include dashboards in members' periodic statements
- ASIC Corporations (Shorter PDS and Delivery of Accessible Financial Products Disclosure by Platform Operators and Superannuation Trustees) Instrument 2022/497, which contains a range of relief for multi-fund, platform and hedge fund providers from certain of the Shorter PDS rules
- ASIC Corporations (Financial Services Guide Given in a Time Critical Situation) Instrument 2022/498, which provides relief from the timing requirements for giving FSGs in certain time critical situations (such as providing advice by phone).

The latest Family Law interest rate determination, for the 2022/23 financial year, was made by the Australian Government Actuary on 6 June. The Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2022, which sets the prescribed interest rate for adjusting a base amount under a deferred Family Law split, sets the rate for that year at 4.7 per cent per annum.

The final results in the Federal election have been determined, and while the Australian Labor Party has formed a majority government in the House of Representatives it requires the support of all 12 Greens senators plus one independent or minor party senator to achieve the majority needed to pass legislation through the Senate. The new Treasurer is Dr Jim Chalmers MP and the new Minister for Financial Services and Assistant Treasurer (including superannuation) is Stephen Jones MP. The new parliament commenced on Tuesday 26 July, with a Budget to be handed down on Tuesday 25 October.

The following bills that were before the previous parliament will need to be reintroduced and passed by both houses if they are to become law:

- Treasury Laws Amendment (2021 Measures No. 7) Bill 2021 — this contains various measures relating to the closure of the SCT and transition to AFCA

- Financial Accountability Regime Bill 2021 and three other bills in the package — introduces a compensation scheme of last resort (CSLR) and "accountability" changes for directors and executives of financial services entities
- Treasury Laws Amendment (Streamlining and Improving Economic Outcomes for Australians) Bill 2022 — this includes the changes to financial reporting and auditing of super funds.

On 7 July, the new government announced that it would shortly release draft legislation to adjust the performance test for faith-based products.

Draft legislation to amend various requirements for annual member meetings was released for consultation on 15 July. The proposed changes will simplify the disclosure on sponsorships, political and industrial body donations and related party payments, align the definition of "related party" with that in the Australian accounting standards and prevent double counting of political donation expenditure. Consultation closed 28 July.

In addition, as well as the review of the performance test mentioned above, Treasury will consider whether there have been any other unintended consequences from the Your Future, Your Super legislation, in particular concerns regarding the regulatory complexity of the best financial interests duty requirements. The review will not unwind the stapling measures, however, or remove the requirement for trustees to meet high performance and probity standards.

News in brief

APRA expectations on crypto-assets

On 21 April APRA issued a letter to all regulated entities including super funds setting out its risk management expectations in relation to activities associated with crypto-assets, along with a roadmap for its development of a prudential framework for crypto-assets.

Among other things, the letter states that APRA expects all regulated entities will:

- conduct appropriate due diligence and a comprehensive risk assessment before engaging in activities associated with crypto-assets, and ensure that they understand, and have actions in place to mitigate, any risks that they may be taking on in doing so
- consider the principles and requirements of the relevant outsourcing Prudential Standard when relying on a third party in conducting activities involving crypto-assets

- apply robust risk management controls, with clear accountabilities and relevant reporting to the Board on the key risks associated with new ventures.

APRA expects entities to ensure they comply with all conduct and disclosure legislation administered by ASIC. This will require robust conduct risk management and consideration of distribution practices, product design and disclosure. Entities are expected to consult with APRA and ASIC where they are unclear on prudential, disclosure or conduct requirements and expectations when undertaking activities associated with crypto-assets. The guidance can be found in ASIC Information Sheet INFO 225 released in October 2021, which explains the obligations under the legislation it administers on crypto-assets.

APRA will soon release a draft cross industry prudential standard on operational risk for consultation that will include new and revised requirements for operational risk management. While these requirements will apply to the entirety of an entity's operations, many will be directly relevant to the management of operational risks associated with crypto-asset activities.

ASIC Information Sheet on how super funds can avoid "greenwashing"

ASIC has released a new Information Sheet INFO 271 to help super funds avoid "greenwashing" when offering or promoting sustainability-related products. ASIC defines this as the practice of misrepresenting the extent to which a financial product or investment strategy is environmentally friendly, sustainable or ethical.

ASIC recently reviewed a sample of super and investment products and identified some areas for improvement. In particular, ASIC considers that product issuers need to:

- use clear labels
- define the sustainability terminology they use
- clearly explain how sustainability considerations are factored into their investment strategy.

The Information Sheet includes a number of questions issuers should ask themselves when preparing communications and disclosures around sustainability-related products, as well as some examples of concerns ASIC identified from its review.

Final financial sector levies for 2022/23

The final financial sector levies for 2022/23 were made on 30 June 2022. The levies applicable to super funds that

are not pooled superannuation trusts are set out below. The levy for small APRA funds remains at \$590, although the levies instrument defines such a fund as one with fewer than five members.

Table 1

	2022/23
Restricted:	
Rate (%)	0.00459
Minimum (\$)	10,000
Maximum (\$)	800,000
Unrestricted (%)	0.002989

APRA quarterly superannuation statistical publications released

Highlights of APRA's December 2021 Quarterly Superannuation Performance publication, issued on 1 March 2022, included the following:

Table 2

	March 2021 (\$ billion)	March 2022 (\$ billion)	Change
Total superannuation assets	3,136.2	3,441.5	+9.7%
Total APRA-regulated assets	2,131.9	2,337.2	+9.6%
Of which: total assets in MySuper products	840.5	927.9	+10.4%
Total self-managed super fund assets	796.1	892.0	+2.7%

APRA noted that there was a 9.7 per cent increase in the value of total superannuation assets over the 12 months to 31 March 2022 due to strong investment performance and positive contributions growth from COVID-19 fiscal stimulus received over the period. Benefit payments declined 23.8 per cent for the year. Over this period, lump sum payments totalled \$44.1 billion, a decline of 38.0 per cent over the year, reflecting the closure of the COVID early release scheme and lump sum payments returning to average levels. Pension payments totalled \$39.8 billion over the year, an increase of 2.3 per cent.

APRA's MySuper statistical publication for the March 2022 quarter was also released on 24 May 2022. This report is issued on a product-by-product basis and APRA do not report overall summary statistics.

A guide to key changes

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

Table 3

Date	Change
31 Aug 2022	Results of next performance test (MySuper products only) issued to trustees.
30 Sep 2022	Final date for new version of RG 97 to apply to PDSs.
31 Dec 2022	Last day of transition period to new calculator and retirement estimate relief.
1 Jan 2023	Commencement of new version of SPS 530 Investment Governance.
1 Jul 2023	Next scheduled increase in SG (to 11.0 per cent).
1 Jul 2023	Last date for trustees with insurance arrangements provided by connected entities ending on or after that date to obtain independent certification under SPS 250.
1 Jul 2023	Earliest proposed start date for application of Financial Accountability Regime to superannuation.
1 Jul 2023	Proposed start of first reporting period for new financial reporting obligations for super funds.
31 Aug 2023	Due date for first IDR reports to ASIC for most super funds.
1 Jan 2024	Commencement of section 29QC of the SIS Act.
1 Jan 2024	Proposed commencement of CPS 900 Resolution Planning.
1 Jul 2024	Start date for website disclosure of certain information relating to employer-sponsored sub-plans.
1 Jan 2025	Proposed commencement of CPS 190 Financial Contingency Planning for superannuation.
1 Oct 2027	Start date for publication of product dashboard for certain Choice products.
1 Oct 2027	MySuper product dashboard to be included in periodic statements.

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About WTW

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