Super Update

November 2022

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Updates coming to member outcomes requirements

On 1 August APRA released a discussion paper on proposed updates to *SPS 515 Strategic planning and member outcomes*. The changes include:

- strengthened requirements to ensure trustees deliver quality outcomes to all cohorts of members in a more measurable way
- increased trustee oversight of financial projections and closer monitoring and management of financial resources in an integrated way that better reflects trustees' risk profile and the nature of their business
- ensuring timely action is taken to address areas of underperformance including transferring members to better performing products or funds.

On cohort analysis, APRA expects trustees to demonstrate a deep understanding of their membership base and to go beyond simplistic cohorts that only reflect age, product and investment option. Trustees will need to be accountable for outcomes to members in a more granular and measurable way, to reduce the risk of pockets of underperformance being masked.

Boards will only be able to approve outcomes where they are defined in a quantifiable and objective way and will need to be able to demonstrate why the cohorts are reasonable for the fund. Cohorts will need to have regard to those groups of members covered by the trustee's retirement income strategy. The role of performance benchmarks, such as the performance test and APRA's Heatmaps, in the overall monitoring of outcomes for members will also be clarified in the SPS 515 framework.

On the management of financial resources, APRA considers that members would benefit from an industry that takes a more sophisticated and rigorous approach to financial resource management. The regulator therefore intends to enhance the existing requirements and guidance in this area, with trustees expected to be required to:

- adopt and clearly articulate performance measures relating to financial management, action plans, objectives, strategic goals and targeted outcomes for members
- monitor the adequacy of financial resources across the trustee's business operations relative to targets and triggers, to ensure the trustee can respond to challenges by making the required investments in the business
- ensure stress testing and scenario analysis are used to determine the robustness of the financial management strategy and forecasts.

APRA has formed the view that the financial information in many business plans does not clearly demonstrate ongoing financial soundness and does not effectively integrate the expected financial impacts of strategic initiatives. The quality and depth of financial projections also varies considerably across the industry, and assumptions underpinning trustee analysis are often unsubstantiated or inconsistent with historical trends and are not routinely subject to robust stress-testing. APRA therefore proposes to ensure that trustees only approve financial projections that form part of the business plan where they are satisfied that the projections:

- provide sufficient detail to understand the expected impacts of member contribution and rollover/payment flows and planned strategic initiatives
- are the result of reasonable and robust assumptions when compared with historical trends and analysis of expected future impacts
- have been prepared using a range of stress-testing scenarios, and the results presented enable an understanding of potential downside scenarios
- are consistent with a board-approved financial projections methodology.

On performance assessment, APRA has identified that some trustees struggled to interpret its requirements in relation to the business performance review (BPR), and some sought guidance on how their outcomes assessments and BPRs could be completed in a manner that allows the subsequent business plan to be informed by the trustee's reflections on performance. APRA therefore proposes to:

- ensure that the board can clearly demonstrate, in its approval of the BPR, a deeper understanding and quantification of the factors driving performance and how planned actions will respond to the factors identified
- clarify that, while trustees may determine the timing of their business planning cycle, the BPR and member outcomes assessment must be undertaken prior to the trustee board's approval of the next business plan, allowing for sufficient time for planning to be informed by the most recent performance assessments
- require trustees to have a robust trigger framework for identifying when a formal review of outcomes is required
- clarify, through guidance, the circumstances that would trigger revisions to the business plan, such as an expected failure of the performance test
- ensure trustees integrate their BPR with other actions required under the prudential framework, for example, attribution analysis under the investment governance framework.

Trustees will also be required to leverage the additional and more granular data collected under the data transformation project to support enhancements in their assessment of outcomes.

Finally, there are changes proposed to require trustees to demonstrate how they have set their fees and costs in a manner that is consistent with a set of "fee principles" described in the discussion paper and which were contemplated in APRA's discussion paper on financial resilience in superannuation from November 2021.

Consultation on the discussion paper closed on 11 November. After considering submissions on the discussion paper, APRA intends to release draft enhancements to the SPS 515 framework early in 2023 for a further round of consultation. It appears that this will include updates to the related prudential practice guides *SPG 515 Strategic and business planning* and *SPG 516 Business performance review*. This second round of consultation will include a proposed commencement date for the new version of SPS 515.

This is an extensive set of proposed changes that will challenge the depth of many trustees' resources, especially given the other regulatory changes around accountability and remuneration, resilience and investment governance already on the horizon as well as APRA's ongoing data transformation project.

Other APRA consultations

In addition to its member outcomes consultation above, there has been a flurry of other consultation and discussion papers from APRA recently.

Late in July APRA commenced consultation on a new cross-industry prudential standard *CPS 230 Operational risk management* intended to strengthen the management of operational risk in regulated industries including superannuation. The proposed new standard includes requirements for regulated entities to:

- maintain effective internal controls for operational risk, commensurate with the size, business mix and complexity of the activities they undertake
- be prepared and ready to ensure continued delivery of critical operations during periods of disruption
- effectively manage the risks associated with the use of material service providers. In this context, the accompanying discussion paper states that services that would be considered material for superannuation include risk management, core technology services, fund administration, custodial services, investment management, internal audit, arrangements with promotors and financial planners and services supporting critical operations.

The new standard will incorporate updated requirements for service provider management and business continuity management that are currently contained in *SPS 231 Outsourcing* and *SPS 232 Business continuity management* for super funds. These standards will both be replaced by the new CPS 230, which is expected to be finalised early in 2023 and to commence from 1 January 2024.

On 6 September APRA released two draft prudential practice guides to support its draft prudential standards on financial contingency and resolution planning, along with a letter to regulated entities including super fund trustees. *CPG 190 Financial contingency planning* is intended to assist entities in meeting the key requirements of the proposed new prudential standard CPS 190. It provides further explanation of the outcomes that APRA expects, so that entities can meet these expectations through their actions. *CPG 900 Resolution planning* sets out a framework for how APRA expects to engage with entities in developing and implementing a resolution plan. The proposed draft guidance explains what is expected of entities in the resolution planning process and sets out the factors that APRA will have regard to in developing resolution plans for individual entities.

The final version of CPS 190 is expected later in 2022, while the final CPS 900 will be released in the first half of 2023. Consultation on the draft prudential practice guides closes on 6 December, with those drafts also expected to be finalised in the first half of 2023.

Legislative update

A number of bills relating to superannuation and retirement are currently before the parliament:

- the Treasury Laws Amendment (2022 Measures No. 2) Bill 2022, which will reduce the downsizer contribution eligibility age from 60 to 55; supporting regulations were made on 30 September 2022 which will commence once the bill becomes law
- the Financial Accountability Regime Bill 2022 and three related bills, which will together introduce the new accountability regime (FAR) for the banking, insurance and superannuation industries and create a compensation scheme of last resort (CSLR) for eligible consumers where they have an AFCA determination in their favour but the relevant financial firm has not paid the consumer in accordance with the determination. Treasury consultation has now closed on two sets of supporting regulations – one for the CSLR and the other for FAR Minister Rules that will prescribe, among other things, particular responsibilities and positions which will cause a person to be subject to the FAR and an enhanced notification threshold above which an entity will be required to comply with additional notification obligations
- the Treasury Laws Amendment (2022 Measures No.3) Bill 2022, which will, among other things, adjust the performance test for faith-based products. Treasury consultation has also recently closed on supporting regulations for this measure.

New regulations for annual member meetings were registered at the start of September. Among the key changes, most of the itemised lists of expenditure that were required to be disclosed to members have been abolished, with aggregate totals only required. However, political donations will continue to have to be itemised. There has also been clarification to prevent double counting of political donations, and the definition of a related party for the purpose of the related party expenditure disclosures has been aligned with the definition in accounting standard AASB 124. The amendments apply to notices relating to a year of income that ends on or after 30 June 2022, where the notice is given on or after 9 September 2022.

APRA also registered a new confidentiality determination *(Australian Prudential Regulation Authority (confidentiality) determination No. 3 of 2022)* on 13 September, specifying various reporting standards, or parts of reporting standards, that will be deemed not to contain confidential information. The determination will enable the relevant data to be published in a number of new statistical publications that are discussed later in this edition of *Super Update*.

Treasury announced a review of ASIC's industry funding model on 9 August. The review will be forward-looking and focus on identifying any changes to the funding model that may be required to ensure the settings remain appropriate. A discussion paper was released on 28 September containing 31 consultation questions, with consultation closing on 28 October.

Treasury has also released several batches of legislation for consultation:

- on 24 August, a package of draft legislation and regulations to implement a number of recommendations made by the Australian Law Reform Commission from its review of the Corporations Act
- on 29 August, draft legislation that will allow relevant Treasury portfolio regulators including APRA and ASIC to conduct hearings and examinations virtually
- on 2 September, a large batch of largely maintenance amendments to various Treasury portfolio laws, including changes to the rules for annual member meetings to clarify that they can be held virtually and when the meeting will be deemed to be held for legal purposes, technical changes to the First Home Super Saver Scheme announced in the 2021 Budget and some clarifications on the timeframes in which an existing relevant adviser must meet the financial adviser education and training standards.

Consultation has now closed on all of those drafts.

On 7 September Treasury released a consultation paper on the *Your Future, Your Super* measures, including the performance test. The consultation covers:

- the performance test methodology, the consequences of failure and product coverage, including whether there are likely to be unintended consequences from extending the test to trustee-directed products and whether it should be further extended to other products such as single sector or retirement products
- whether the ATO's *YourSuper* comparison tool is achieving its objectives
- how the stapling measure is progressing, including the extent to which employers are putting into practice processes to seek stapled fund details from the ATO, how the implementation of stapling has changed onboarding, software and payroll processes for new employees and whether there are any barriers in the current framework to achieve the intent of the stapling reform
- the best financial interests duty, including whether it has had unintended consequences, whether there are types of expenditure or activity that prompt particular trustee concerns in this context, and whether the reverse onus of proof is the most appropriate way to achieve the objective of improving member outcomes.

Consultation closed on 14 October.

On 19 July APRA finalised the new version of prudential standard *SPS 530 Investment governance*, which will commence on 1 January 2023. The most important changes include:

- new minimum requirements for trustees' comprehensive stress testing programs, which must be conducted annually
- a new requirement for a valuation governance framework to identify and manage valuation risk, including a board-approved valuation policy with specified minimum content
- additional requirements for trustees' liquidity management plans.

At the same time, APRA advised that it intends to update its guidance in *SPG 530 Investment governance* and *SPG 531 Valuation*, with draft updates to be released later in 2022.

Finally, late in August APRA released a response to its consultation on Phase 2 of the data transformation project. Key feedback in submissions to APRA included what it described as the "ambitious" proposed timeline for consultation. Stakeholders noted that key resources at trustees and service providers have limited capacity to engage at peak reporting times, particularly over the financial year end period when there are existing reporting obligations and year-end reporting. Stakeholders suggested that consultation should be limited at these times to enable strong industry engagement. Submissions also recommended that APRA consider providing additional time prior to commencing Phase 2, as funds are still working on the implementation of initial reporting under the Phase 1 staged implementation, as well as suggesting a lead time of around 12 months from finalisation of reporting standards to the first due date to ensure sufficient time and capacity to develop robust reporting solutions and deliver quality reporting.

In response to this feedback, APRA decided to delay formal consultation on Phase 2 to February 2023, with informal engagement on this phase starting in September. APRA will now formally consult on Phase 2 over four releases (rather than three), with the overall consultation timeline extended from nine months (ending in June 2023) to 14 months (ending in April 2024). There is a detailed timeline on the topics that will be covered under each of the four releases in the consultation response document. APRA will also commence a range of engagement forums on Phase 2, including a strategic stakeholder forum to enable ongoing strategic engagement, at a senior management level, on issues impacting the industry. Finally, the response document includes a list of pre-data transformation reporting standards that overlap with Phase 1 standards and which APRA proposes to discontinue, with an update on next steps.

News in brief

October Budget

It was a quiet night for superannuation in the Federal Budget handed down on Tuesday 25 October 2022, with no new measures announced. The government restated its commitment to lowering the downsizer contribution eligibility age from 60 to 55, as well as announcing a Housing Accord that will include measures to facilitate investment in housing by institutions including super funds. See our Budget edition of *Super Outcomes* for more information.

Performance test results for 2022

The performance test results for MySuper products for 2022 were released on 31 August. Four products failed for the second time:

- Australian Catholic Superannuation and Retirement Fund – LifetimeOne
- Energy Industries Superannuation Scheme-Pool A – Balanced (MySuper)
- Retirement Wrap – BT Super MySuper
- AMG Super – AMG MySuper.

Those four products were required to close to new members from 31 August. In addition, Westpac Group Plan MySuper failed for the first time.

Regulators' priorities for superannuation

Both APRA and ASIC released their new corporate plans during August.

APRA will continue to rectify sub-standard practices in relation to:

- fund expenditure, including trustees' practices as they relate to their best financial interests duty obligations
- investment governance, successor fund transfers and financial resilience
- strategic planning and business performance review practices, insights and actions.

It will intensify pressure on trustees to cease offering what it considers to be high-fee, poor performing products, and scrutinise choice products via the legislated performance tests, the Heatmaps, heightened supervision of trustees that fail the performance test or otherwise demonstrate poor performance and using prudential powers to take action against trustees where warranted. It will also accelerate what it considers to be beneficial industry consolidation to establish viable and durable business models across the industry.

There will be a review of trustees' retirement income strategies, and APRA will also consider the implications of the new strategies for the life insurance industry, including setting appropriate standards for managing the risks of retirement income products within the life insurance market.

Across regulated entities more widely, APRA will continue its heightened focus on operational and technological resilience including assessment of compliance with *CPS 234 Information Security*. It will also continue its governance, risk culture, remuneration and accountability (GCRA) work via updates to various prudential standards to ensure, among other things, they are aligned with the proposed FAR, and embedding compliance with *CPS 511 Remuneration* including conducting reviews on the role of boards and the use of non-financial measures in incentive plan design, consequence management and remuneration adjustments.

ASIC's priorities relevant to superannuation include retirement decision making and product design and distribution, along with its ongoing work on issues relating to insurance in superannuation. ASIC intends to prioritise protecting consumers, especially as they plan and make decisions for retirement, with a focus on superannuation products, managed investments and financial advice. There will also be surveillance of trustees' distribution practices in relation to choice products, including an examination of the role of financial advisers and their licensees in the distribution of underperforming choice products.

ASIC will continue to monitor underperformance notifications and other communications by trustees whose products fail the performance test in coming years, with enforcement action against misleading conduct relating to fund performance. It will also analyse trustees' internal dispute resolution practices to assess trustees' compliance with new internal dispute resolution standards. Findings will be communicated to drive improvement.

New ASIC Regulatory Guide on consumer remediation

ASIC has released a new Regulatory Guide *RG 277 Consumer remediation*, which took effect on the day of release, 27 September 2022. It sets out nine principles for conducting a remediation as well as a range of guidance including on how to determine monetary and non-monetary penalties. It continues to refer to the joint ASIC and APRA guidance *RG 94 Unit pricing guide to good practice*, issued in August 2008, for guidance in relation to remediation of unit pricing errors.

ASIC review of target market determinations

On 29 August, ASIC released the results of a review it conducted of 55 target market determinations (TMDs) issued by 27 super fund trustees covering all sectors of the industry.

ASIC found that target markets could be better defined. Trustees were encouraged to clearly define the intended target market against the product and its key attributes and to ensure, when describing classes of consumers as being potentially in the target market, that the factors indicating product suitability for the relevant consumers are sufficiently covered.

The majority of TMDs described elements of the submarkets for their investment options, including objectives, risk level and minimum timeframes. However, there were some broad objectives and non-numerical timeframes such as 'high-growth' or 'long-term'. To be effective, ASIC considers that investment sub-markets should be specific and comparable, using quantifiable investment objectives or identifiable benchmarks and commonly adopted measures such as the Standard Risk Measure.

ASIC found that not all funds' review triggers were specific enough to determine when a review of the TMD would be triggered. Many used terms such as 'persistent' level of complaints or 'significant' member movement. ASIC suggested that trustees consider how insights from the member outcomes requirements, including the annual outcomes assessment and the BPR, might be incorporated into review triggers. ASIC also recommended that ongoing reviews of fund TMDs be conducted at least annually in order to utilise insights gained from the member outcomes process.

New APRA super performance publications

Late in July APRA announced that it would launch a new series of superannuation data publications which it considers will further enhance the quality and breadth of information available to industry stakeholders. The new publications, to be issued quarterly or annually, will comprise new and expanded data on an industry, fund and product basis. They will include information on fees and costs, asset allocation and performance data for all products and investment options as well as information on insurance arrangements, expenses and member demographics. Most of the publications are expected to commence from the first quarter of 2023.

APRA quarterly superannuation statistical publications released

Highlights of APRA's June 2022 Quarterly Superannuation Performance publication, issued on 23 August 2022, included the following:

Table 1

	June 2021 ($ billion)	June 2022 ($ billion)	Change
Total superannuation assets	3,327.9	3,312.5	-0.5%
Total APRA-regulated assets	2,266.2	2,241.0	-1.1%
Of which: total assets in MySuper products	901.7	884.5	-1.9%
Total self-managed super fund assets	843.7	868.7	+3.0%

APRA noted that there was a 0.5 per cent decrease in the value of total superannuation assets over the 12 months to 30 June 2022 reflecting volatility in financial markets following global interest rate increases in response to high levels of inflation, constrained supply chains and ongoing uncertainty due to the conflict in Ukraine. Total contributions increased 15.2 per cent over the year, while benefit payments declined 9.5 per cent, reflecting the closure of the COVID early release scheme and lump sum payments returning to average levels. Pension payments totalled $40.9 billion over the year, an increase of 6.1 per cent, in line with long-term trends and expected rises in living costs.

APRA's MySuper statistical publication for the June 2022 quarter was released on 31 August and then reissued on 8 September 2022. This report is issued on a product-by-product basis and APRA does 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 2

Date	Change
31 Dec 2022	Last day of transition period to new calculator and retirement estimate relief.
1 Jan 2023	Start date for 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 Insurance in superannuation*.
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.
31 Aug 2023	Last date for next performance test results to be issued.
1 Jan 2024	Commencement of section 29QC of the SIS Act.
1 Jan 2024	Proposed commencement of *CPS 900 Resolution planning*.
1 Jan 2024	Proposed commencement of *CPS 230 Operational risk management*.
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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