Super Update

January 2023

APRA discussion paper on financial resources for risk events in superannuation

On 14 November 2022 APRA released a discussion paper that proposes to replace existing prudential standard *SPS 114 Operational Risk Financial Requirement* with enhanced, and materially different, obligations for trustees.

At the core of these enhanced requirements will be a two-tiered model which APRA calls Baseline+, consisting of:

- a baseline component, to ensure ready access to financial resources to fund recovery or exit activity and
- an operational risk component, to spread the impact of operational risk fairly across different cohorts of members. The operational risk component will largely reflect the approach of the existing operational risk financial requirement (ORFR) but with greater flexibility.

Baseline component

Under the new model, the baseline component will be to ensure that financial resources are available to support recovery or transfer/exit activities. This component will only be able to be used to fund the activation of:

- a business continuity plan under draft *CPS 230 Operational Risk Management* (which will eventually replace *SPS 232 Business Continuity Management*)
- a financial contingency plan under *CPS 190 Recovery and Exit Planning* (which commences for super fund trustees on 1 January 2025)

- a resolution plan under draft *CPS 900 Resolution Planning* or
- a plan that involves the transfer or receipt of members under the proposed changes to *SPS 515 Strategic Planning and Member Outcomes*.

There will be two ways trustees can choose to calculate the amount of this component:

- the RSE licensee-led method: an amount that the trustee can demonstrate as sufficient to allow it to undertake the actions covered by the baseline component while ensuring business operations are maintained, or
- the basic calculation method: an amount based on the number of members, which may be subject to a minimum dollar amount determined by APRA.

APRA expects most trustees to use the first of these approaches, but trustees who do not have the capability to do so could use the basic calculation method. APRA will draw on international precedents to inform the basic calculation method. Two examples from the UK and Republic of Ireland were mentioned in the discussion paper, with amounts of £75 per member under the first of these and €70 per member with a floor of €100,000 under the second. Given the importance of the baseline amount and the cost of implementing contingency plans, APRA is considering the appropriateness of requiring a minimum amount to ensure that all members are protected. Any use of the baseline component will need to be replenished within three years.

Operational risk component

The operational risk component will be intended to be the primary source of funds to address the impact of operational risk events and will also serve as a buffer to the baseline component. APRA proposes to permit trustees to determine the amount held to satisfy the operational risk component, with a focus on addressing operational risks in an equitable manner. A broader definition of operational risk events will allow trustees to better achieve this goal and, where possible, address operational risks before they adversely affect outcomes for members.

APRA proposes to define operational risk as the risk that a superannuation fund may suffer loss due to inadequate or failed internal processes, people and systems or from external events, excluding investment and market risk for fund investments. The uses of the operational component will be expanded to include investigations, remediations and mitigation-related activities — both to address operational risk within the fund as well as encourage operational risk prevention activities to reduce the likelihood of reoccurrence of operational risk events. The existing target amount and tolerance limit for these in *SPS 114* will be retained with their calculation to be as per the existing *SPS 114*, but the "guidance" target amount of 0.25% of funds under management will be abolished. It will also be up to the trustee to determine an equitable period in which any use of this component must be replenished while minimising the risk of adverse member outcomes.

The existing notification requirements in *SPS 114* will also be abolished, with APRA intending to consult on new data collection requirements as part of phase two of the data transformation project. Consultation on the discussion paper closes on 17 March 2023.

ASIC review of super fund internal dispute resolution

ASIC has released two new reports on a review it conducted on super fund trustee complaints handling and compliance with new *Regulatory Guide 271 Internal dispute resolution*.

Report 751 contains the results of the review, which covered 35 trustees in an initial review and a subset of 10 trustees who were subject to a more detailed review. *Report 752* was prepared by a third party for ASIC and contains what ASIC describes as noteworthy insights and practical tips for writing consumer-centric responses to complaints.

Key concerns identified by ASIC include:

- *RG 271* sets a maximum timeframe of 45 days (with limited exceptions) to issue a written response for complaints about superannuation (excluding objections to the distribution of a death benefit). ASIC's review found that a number of trustees did not respond to a significant portion of their complaints in a timely manner.
- Most trustees failed to ensure all complainants were kept informed when their response to the complaints exceeded the maximum timeframe. This could delay complainants exercising their right to go to AFCA. ASIC considers that generic information to the effect that the complaint was taking longer than expected is not sufficient.
- Some written responses to complaints omitted mandatory content related to a consumer's right to take their complaint to AFCA. If information on AFCA is in a separate document, the complaint response needs to draw the complainant's attention to the information, for example, by stating that it includes important information about the complainant's right of escalation.

- There were gaps in how most trustees managed systemic issues that could be identified through member complaints or how they used intelligence from complaints to improve their products and services. ASIC considers this a missed opportunity for trustees to detect and address issues that impact their wider membership, thereby improving their business and minimising future problems.
- Trustees' internal reporting often lacked sufficient detail to identify, much less remedy, deficiencies in complaint handling.

ASIC now expects all trustees to consider whether they have effective, fit-for-purpose arrangements and resourcing for:

- responding to complaints on time, in particular those that need a written response
- ensuring responses to complainants contain the right information and can be easily understood
- learning from complaints to detect systemic issues and make improvements
- ensuring internal reporting to the board (or equivalent) and senior management for monitoring internal dispute resolution contains information that will allow them to properly understand if performance is deficient.

Trustees are also expected to take active steps to address any areas they identify as in need of improvement.

News in brief

Government consultation on climate-related financial disclosure

On 12 December 2022 Treasury released a discussion paper on climate-related financial disclosures. The paper states that the government has committed to ensuring large businesses provide Australians and investors with greater transparency and accountability when it comes to their climate-related plans, financial risks, and opportunities. As part of this commitment, the government intends to introduce standardised, internationally-aligned reporting requirements for businesses to make disclosures regarding governance, strategy, risk management, targets and metrics — including greenhouse gasses. The paper is seeking views on key considerations for the design and implementation of such disclosures.

The government proposes that in addition to large listed entities, mandatory climate-related financial risk disclosure requirements will also apply initially to large financial institutions including super funds. Views are sought on appropriate size thresholds. Feedback is also sought on the initial timing and whether a phased implementation approach would be appropriate.

Following this consultation the government will release a specific design proposal for further consultation, which will provide more detail of the new reporting requirements, their implementation and sequencing. Where legislation is required to give effect to the new requirements, it is intended that exposure draft legislation will be released.

Consultation closes on 17 February 2023.

New version of prudential standard *SPS 310* released

On 7 December 2022 APRA released a new version of prudential standard *SPS 310 Audit and Related Matters* which commences on 30 June 2023.

The new version includes a new schedule of the reporting standards that must be addressed in the RSE Auditor's report each year, following changes to the reporting standards arising from the data transformation project.

Reporting Standards *SRS 330.2 Statement of Financial Performance, SRS 530.0 Investments, SRS 531.0 Investment Flows, SRS 540.0 Fees* and *SRS 703.0 Fees Disclosed* have been removed from the audit scope as these reporting standards have been, or will be, revoked by APRA by 30 June 2023.

Reporting Standard *SRS 706.0 Fees and Costs Disclosed* (for MySuper only) and Reporting Form *SRF 550.1 Investments and Currency Exposure* (Table 1, columns 1-5 and 9-12) of Reporting Standard *SRS 550.0 Asset Allocation* have been added to the audit scope. These reporting standards include data items that APRA considers to be critical for purposes including APRA's administration of the legislated MySuper Performance Test and Heatmap.

There were also four reporting standards that were originally proposed to be included in the audit scope under SPS 310 but have not been included in the version registered. APRA currently intends that they will be included for 30 June 2024 via further updates to *SPS 310* in due course. The letter to trustees issued by APRA on the new prudential standard states that this will allow reporting processes relating to Choice product data to be better embedded across the industry.

Final version of prudential standard *CSP 190* released

APRA released the final version of new prudential standard *CPS 190 Recovery and exit planning* on 2 December 2022. The new standard, which was renamed from the draft version *CPS 190 Financial contingency planning*, commences for superannuation fund trustees on 1 January 2025.

According to the accompanying letter to regulated entities, there were no material changes from the draft version, other than the renaming and a restructuring of the requirements to reduce repetition and improve accessibility, as well as some further clarity on some requirements to explain their application across industries.

The associated prudential guidance, currently the subject of consultation, and the related *CPS 900 Resolution Planning*, are expected to be finalised in the first half of 2023.

New version of *SPG 530 Investment governance* released for consultation

On 17 November 2022 APRA released a revised draft of prudential practice guide *SPG 530 Investment governance* for consultation. This new SPG will replace both the current investment related prudential practice guides — *SPG 530 Investment Governance* and *SPG 531 Valuation*.

The new draft:

- includes additional guidance to support new focus areas of *SPS 530*, including liquidity management, stress testing and valuations
- integrates the remaining elements of *SPG 531* that were not elevated to *SPS 530*
- outlines how APRA expects trustees will consider material ESG risk factors as part of their overall investment risk management
- reflects industry requests for greater clarity in APRA's investment governance guidance
- seeks to maintain key relevant aspects of existing guidance.

At the same time APRA confirmed that the start date for the new *SPS 530* would not be deferred from 1 January 2023. The letter to trustees released with the draft prudential practice guide stated that it was APRA's view that the updated requirements in *SPS 530* reflect, in many cases, existing industry practices and existing investment governance guidance. APRA therefore expected that prudent trustees would be in a position to meet the new requirements from 1 January 2023, supported where needed by the existing guidance in current *SPG 530* and *SPG 531*. APRA's supervisory approach will, however, take into account that draft *SPG 530* is yet to be finalised.

Consultation on the new draft *SPG 530* closes on 17 March 2023.

2022 MySuper Heatmap released

APRA released the 2022 edition of its MySuper Heatmap on 15 December 2022. Highlights included:

- Fees and costs fell for most MySuper products. APRA estimates that 8.1 million members (56 per cent of member accounts) had experienced a drop in disclosed total fees and costs since the 2021 Heatmap was published
- 28 MySuper products had closed since APRA released the first Heatmap in 2019. As a result, 1.5 million member accounts containing $51.6 billion in member benefits had been transferred to other products
- 350,000 fewer members are in MySuper products with what APRA classified as "significantly poor" investment performance than in 2021. However, around 800,000 members' accounts remained in those productsadditional requirements for trustees' liquidity management plans
- Sustainability pressures exist across the industry, with most funds posting negative growth over the past three years across one or more of the Heatmap's sustainability metrics.

The 2022 edition of the Choice product Heatmap was deferred by APRA until 2023. It will be issued once it has been updated using data submitted through the new APRA Connect system for the first time.

APRA superannuation statistical publications released

Highlights of APRA's September 2022 Quarterly Superannuation Performance publication, issued on 22 November 2022, included the following:

Table 1

	Sep 2021 ($ billion)	Sep 2022 ($ billion)	Change
Total superannuation assets	3,43.5	3,322.3	-3.2%
Total APRA-regulated assets	2,324.1	2,252.5	-3.1%
Of *which*: total assets in MySuper products	922.8	887.4	-3.8%
Total self-managed super fund assets	890.3	654.2	-2.8%

APRA noted that there was a 3.2 per cent decrease in the value of total superannuation assets over the 12 months to 30 September 2022, predominantly driven by rising global interest rates, pressures from disrupted supply chains and downward revision of global growth outlook. Total contributions increased 12.0 per cent over the year. Pension payments totalled $40.5 billion over the year, an increase of 2.9 per cent, in line with long term trends.

APRA's MySuper statistical publication for the September 2022 quarter was also released on 22 November. This report contains data relating to product profile, asset allocation targets and ranges, investment performance and net returns, as well as fees and costs. Statistics are presented at an individual product or lifecycle stage level.

APRA's annual fund level statistics and annual MySuper statistics reports as at 30 June 2022 were released on 14 December 2022.

Legislative update

With parliament having risen for the summer recess, there are two key bills relating to superannuation and retirement that are yet to be passed:

- the Financial Accountability Regime Bill 2022 and two 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. This bill remains before the Senate. A fourth bill in the original package, the Financial Sector Reform Bill 2022, was passed by the parliament in December with the first two schedules (relating to the CSLR) removed
- the Treasury Laws Amendment (2022 Measures No.4) Bill 2022, which contains the financial reporting changes for superannuation funds and legislation to address the consequences of a Federal Court decision on three appeals known collectively as the 'Douglas decision'. This bill is before the Senate and is also under review by the Senate Economics Legislation Committee.

In addition, there are some minor and technical amendments, including updates to modernise communication methods available to individuals, businesses and regulators when interacting with each other, in the Treasury Laws Amendment (Modernising Business Communications and Other Measures) Bill 2022, which is before the House of Representatives.

Two new disallowance motions have also been announced that are intended to revoke the most recent round of changes to the Annual Member Meeting disclosure requirements.

On 13 December regulations were registered that (among other things) amend the payslip requirements in the Fair Work Regulations to allow for stapling. Under the amendments, the payslip is not required to include the name, or the name and number, of a fund if:

- it has to be given within 14 days after the first day on which the employer pays an amount to the employee in respect of work and
- by the time the payslip is given to the employee there is no chosen fund for the employee and the ATO has not notified the employer of whether there is a stapled fund for the employee or, if the ATO has determined that there is a stapled fund, the ATO has not notified the employer of the details of the stapled fund for the employee.

A number of other regulations were recently registered, including:

- the Treasury Laws Amendment (Rationalising ASIC Instruments) Regulations 2022 consolidates three ASIC instruments into the Corporations Act, and was registered on 12 December
- the Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2022 make miscellaneous and technical amendments to regulations in the Treasury portfolio such as correcting of errors and unintended outcomes, and were also registered on 12 December
- the Treasury Laws Amendment (Modernising Business Communications and Other Measures) Regulations 2022 were registered on 19 December and make various improvements to the Corporations Regulations.

ASIC also registered several amendments to the derivative transaction rules on 20 December.

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
30 Jun 2023	Temporary reduction in account-based pension drawdown limits scheduled to end.
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	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	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

Towers Watson Australia Pty Ltd (ABN 45 002 415 349, AFSL 229921)

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