Super Update

April 2024

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Division 296 tax draft DB regulations

On 15 March, Treasury released draft regulations for the treatment of defined benefit (DB) interests under the proposed Division 296 tax – the higher earnings tax on the super individuals with total balances greater than $3 million.

Generally, Family Law valuation methods will be used to value DB interests. However, Treasury has proposed two other methods for valuing growth phase DB interests that will also be available in specific circumstances:

- A simplified method, equal to the "vested benefits total" of the interest, that will apply to non-public sector lump sum DB interests that were valued at less than $1 million 12 months before the valuation date
- An alternative method certified by an actuary as producing a value between 90% and 110% of the Family Law valuation. Certificates will last for three years (unless withdrawn earlier) and will need to apply to the whole fund or a specified category of DB members.

The draft regulations ensure that a DB member's notional contributions will count towards their adjusted Total Superannuation Balance, rather than their employer's actual contributions in respect of the DB interest.

The draft regulations also update the prescribed assumptions used to value DB interests for the purpose of calculating members' notional taxed contributions. In addition to proposed changes to the exit rates and pensioner mortality rates, the following changes to the key economic assumptions are proposed:

- Discount rate, fund earning/crediting rate: 8% to 6% pa
- Salary/wages growth rate: 4.5% to 3.5% pa
- No change to CPI assumption (2.5% pa).

Grandfathering will be extended to cover increases in new entrant rates that are a direct result of these changes. The changes to the assumptions will apply for working out a member's notional contributions for financial years starting on or after 1 July 2025.

Consultation on the draft regulations closed on 26 April.

We recognise that there are challenges in valuing the diverse range of DB interests, and the simplified and alternative valuation methods are both welcome given the small number of DB members who would be expected to be impacted by the Division 296 tax. However, we do have some technical concerns with the draft regulations. In addition, trustees of DB funds will need to prepare for the administration systems changes needed to complete the required reporting in time for commencement in mid-2025.

It was also difficult to provide feedback on the appropriateness of the use of Family Law valuation methods given that the Family Law (Superannuation) Regulations are due to sunset early in 2025 (see the article later in this edition of Super Update). While updated regulations have been released for consultation, certain proposed updated valuation methods and assumptions were not included in the draft.

Treasury consultation on options to improve the performance test

Consultation has recently closed on a Treasury consultation to canvass a range of options for reforming the performance test, if the government decides to do so in the future. The consultation paper canvassed three broad options for consideration, but also encouraged the industry to put forward any other option they might consider best suited to improving the operation of the test:

- Retention of the current test but with improvements
- Alternative single-metric – a different single-metric framework that would better assess performance. The paper included three specific examples – the Sharpe ratio, a peer comparison, and a simple reference portfolio frontier
- Multi-metric framework – consideration of the use of multiple metrics that would provide a broader assessment of performance. Two specific examples were included – a framework that aligns with the APRA heatmaps, and a targeted three-metric test.

To support industry consideration, the paper summarised the concerns identified by stakeholders in response to Treasury's review of the YFYS reforms in 2022. They were:

- The test focused on investment implementation over other measures of performance such as option design and asset allocation decisions
- It encouraged short term decision making, potentially detracting from the long term outcomes that trustees should be considering when investing
- It incentivised trustees to hug benchmarks, with a range of potential adverse consequences – the paper stated that there was anecdotal evidence of trustees (including those with a track record of outperformance) seeking to minimise their tracking error against the regulated benchmarks, potentially passing on opportunities to deliver better returns. Passive benchmark hugging may also reduce diversification as funds sought to avoid strategies not well represented in the benchmark indices or prioritised passive strategies to lower fees even if this led to lower long term net returns
- It lacked sector neutrality – the benchmarks were considered better suited to investment in traditional asset classes, potentially discouraging investment in asset classes that were not well represented in the benchmark indices. Further, it did not support values-based investing including ESG and faith-based investing.

The paper also listed four key principles that would be used when assessing potential changes to the test:

- It should improve member outcomes and not create barries to investment in assets that deliver good returns
- It should be effective in identifying underperforming products, involve clear consequences for failure, and should be efficient and timely to administer for both APRA and super funds
- The performance measure should be widely applicable and transparent, ideally applying to as wide a range of superannuation products as possible
- The testing framework should be suitable to apply consistently over time regardless of market changes so that funds can have certainty and members can see long term performance that is not impacted by changes to the test that reset the rules.

Finally, the paper invited industry view on a range of broader considerations that need to be taken into account if the government decides to make changes to the test in future. Among these, the scope to widen the application of the test to the following products was discussed:

- Externally managed products — which are selected by the trustee even if the trustee does not control the underlying investments
- Single sector products — even though the trustee's ability to value-add is limited to asset selection and fees charged
- Retirement products — while a testing regime could be applied to account-based pensions, this should be done in a way that does not discourage innovation in the post retirement space, particularly in relation to longevity products.

The paper noted that there were difficulties in expanding the test to SMSFs, direct assets purchased through platforms, life office statutory funds and defined benefit interests.

Other wider considerations included the assessment of fees, barriers to product consolidation and potential changes to the consequences of failing the test.

In our view, member outcomes should be the primary principle to be used when assessing potential changes to the performance test. A well-designed multi-metric test would, in our view, be more likely to encourage funds to focus on member outcomes and would allow a broader range of components of overall fund performance to be assessed. We would encourage the government to consult further on such a test, including the most appropriate combination of metrics, how the threshold for failure should be applied, and transition arrangements to ensure there is no unreasonable imposition of new criteria retrospectively.

Replacement Family Law (Superannuation) Regulations with new valuation methods

On 14 March, the Attorney-General's Department commenced consultation on a new version of the Family Law (Superannuation) Regulations, as the existing regulations are due to sunset on 1 April 2025.

The new regulations will include updated standard valuation methods and assumptions following a review of the methods and factors in the existing regulations by the Australian Government Actuary. The consultation paper released with the draft regulations states that the new methods and factors will enable the accurate valuation of a wider range of superannuation interests and benefits, and better reflect when people are choosing to retire and how people are choosing to access their benefits. The existing default valuation factors have also been updated to reflect current demographic and economic actuarial assumptions.

Unfortunately, the new methods and factors have not been included in the draft regulations. The Attorney General's Department considers that publishing them in advance of their commencement may influence parties' behaviour in resolving disputes around family law property division. Instead, they will only be published when the final regulations are made (which cannot occur until the final quarter of 2024).

Trustees will need time to update systems and processes to reflect the new valuation methods and factors, but the consultation paper states that the amount of time to be provided needs to be balanced against the risk that a delay in commencement after the new methods and factors are released will influence the behaviour of separating couples. Feedback is sought, among other things, on when the new regulations should commence if they are made and published before 1 April 2025.

There are currently 38 super funds that have had tailored valuation methods or factors approved by the relevant Minister. There is no framework for reviewing these but the Australian Government Actuary is of the view that they should be based on current actuarial assumptions, so information is sought on how much notice trustees would need to update their approved methods and factors, and what barriers would prevent this, if a requirement for review was to be inserted in the regulations.

Consultation closed on 26 April.

Draft amendments to SPS 114 and SPG 114 released

APRA has released draft amendments to SPS 114 ORFR and the supporting guidance in SPG 114 for consultation, along with a letter to trustees providing feedback on its previous consultation on proposed changes to the way the ORFR operates.

As a result of industry feedback, APRA has abandoned its original proposal to introduce separate components to the ORFR. Instead, APRA's approach is focused on integration with new prudential standard CPS 230 Operational Risk Management (which commences for super funds on 1 July 2025) and better enabling use of the ORFR when needed.

APRA now proposes to amend SPS 114 and SPG 114 to:

- Clarify the purpose of the ORFR
- Introduce a clear and direct relationship with CPS 230
- Widen the range of uses for the ORFR
- Amend the notification requirements to facilitate use of the ORFR.

APRA has also decided to maintain its existing guidance for the ORFR target amount of 0.25% of funds under management. The proposed changes to SPG 114 recognise that, in exceptional cases, a trustee may seek to adopt a lower target amount. APRA's expectation is that, in such exceptional cases, the entity would typically be a significant financial institution and would provide a clear, compelling and evidence-based rationale for a different amount (and SPS 114 will require that entity to notify APRA in advance). APRA will also monitor industry practice to assess whether there is a need to further evolve the requirements and guidance.

Consultation closes on 13 May.

News in brief

Thresholds for 2024-5 released

The ATO has released the updated thresholds that will apply to superannuation for 2024-25, as set out in the table below.

Threshold	2023-24	2024-25
Concessional contribution cap	$27,500	$30,000
Non-concessional contribution cap	$110,000	$120,000
General transfer balance cap	$1,900,000	$1,900,000
DB income cap	$118,750	$118,750
SG maximum contribution base (per quarter)	$62,270	$65,070
Co-contribution thresholds: Lower threshold Higher threshold	 $43,445 $58,445	 $45,400 $60,400

Draft regulations to fix transfer balance cap issues for DB pensioners on SFT

Treasury has released draft regulations that are intended to ensure that when a member in receipt of a capped DB income stream undergoes a successor fund transfer (SFT), the amount of the credit to their transfer balance account on commencement of the new pension income stream will be deemed equal to the amount of the debit from their account when the old one ceased. The amendments are required to fix an anomaly under which recipients of these income streams could have adverse impacts on their transfer balance account when their income stream was moved to a new fund under an SFT.

The change will be backdated to apply to any affected member who was subject to an SFT on or after 1 July 2017 where the SFT resulted in an increase to their transfer balance account. If the SFT resulted in a reduction in the member's transfer balance account, they will continue to benefit from that reduction. The new regulation will, of course, also apply to any new SFTs after it commences.

Consultation closed on 24 April.

Financial accountability regime – materials for super funds released

On 14 March, APRA and ASIC released a letter to trustees setting out the actions they need to take in anticipation of the commencement of the Financial Accountability Regime (FAR) for super on 15 March 2025, along with an information package and draft Regulator Rules that will set out key functions for superannuation (and insurance) and were open for consultation until 19 April.

APRA and ASIC encourage all trustees to:

- Familiarise themselves with the information package
- Determine (based on whether total assets exceed $30 billion) whether the fund is subject to the enhanced notification requirements under the FAR
- Identify any 'significant related entities' (SREs)
- Identify their accountable persons and those of any SREs, and ensure that accountable person cover all areas of the operations of the fund
- Determine which key functions are likely to be applicable to them and which accountable persons are responsible for those functions
- Establish processes to ensure that they comply with their notification obligations
- If they are subject to the enhanced notification requirements, begin to prepare accountability maps and accountability statements
- Review their remuneration policies to ensure they comply with the deferred remuneration obligations under the FAR.

Super on government paid parental leave

On 7 March, the government released its "Working for Women" strategy. It includes an announcement that the government will pay super on government-paid parental leave from 1 July 2025. It will apply to parents of babies born on or after that date, who will receive 12% super contributions on top of their government-funded parental leave payments.

APRA to publish super fund expense data

APRA announced on 27 March that it would begin publishing super fund expense data from August 2024. Publication will include details on:

- Expenses for the whole industry and for each fund by categories including administration, advice, member services, marketing, trustee board (including director remuneration), and other corporate overheads (such as travel and entertainment
- Recipients of payments made by each fund to industrial bodies and related parties, in relation to promotion, marketing or sponsorship expenses and any political donations.

Fund level data will include payee/service provider names for the same categories of payments currently reported to members in annual member meeting information – director and executive remuneration, marketing and sponsorship expenses, industrial body and related party expenses and political donations. However, there will be inconsistencies between this data and that published by funds for annual member meetings, such as whether they are disclosed on a cash or accruals basis.

Further information will also be published on the type of investments the industry holds in relation to property, infrastructure, alternative strategy funds, listed equity and private equity.

Finally, APRA will publish the total expense margin contribution to related party service providers profit (reported in Reporting Standard SRS 332.0 Table 4 Related Party Reporting) by service provider, segmented by the type of relationship with the service provider, e.g. wholly owned subsidiary, partly owned subsidiary, parent or group company and other relationship.

APRA superannuation statistical publications released
Highlights of APRA's December 2023 Quarterly Superannuation Performance publication, issued on 27 February 2024, included the following:

	Dec 2022 ($ billion)	Dec2023 ($ billion)	Change (%)
Total Superannuation assets	3,360.1	3,695.5	+10.0
Total APRA-regulated assets	2,300.6	2,568.1	+11.6
Total self-managed super fund assets	854.6	913.7	+6.9

APRA noted that the growth in superannuation over the past year was driven by continued strong contribution inflows and a 9.5% rate of return. Contributions increased by 11.7% to $172.6 billion over the year ending in December 2023. Benefit payments increased by 21.5% to $111.1 billion over the year.

APRA's MySuper statistical publication for the December 2023 quarter was also released on 27 February. This report contains data relating to product profile, asset allocation targets and ranges, investment performance and net returns, as well as fees and costs. It now also includes some insurance premium data.

In addition, on 12 April APRA released the December 2023 editions of its new series Quarterly Superannuation Product Statistics and Quarterly Super Industry publications.

Legislative update

Parliament is now in recess, resuming for the Budget session on 14 May 2024. The following bills remain before the parliament:

- The Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023, which includes the government's proposed changes to the non-arm's length expense rules for SMSFs and corrections to AFCA's legislation to allow it to hear certain superannuation complaints, is before the Senate
- The Superannuation (Objective) Bill 2023, which will enshrine the objective for superannuation into law, is also before the Senate. This bill was referred to the Senate Economics Legislation Committee for review; the Committee recommended only that the bill be passed
- The Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023 and related tax imposition bill, which will create the new Division 296 tax on earnings on balances greater than $3 million, are also before the House of Representatives. They have also been referred to the Senate Economics Legislation Committee for review, with the reporting date recently extended to 10 May 2024.

Two new bills of interest were also introduced to parliament before it rose:

- The Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024 contains the first round of changes in response Quality of Advice review. It is before the House of Representatives and has been referred to the Senate Economics Legislation Committee for review and report by 20 June 2024
- The Treasury Laws Amendment (Financial Market Infrastructure and other Measures) Bill 2024 contains, among other things, the government's proposed climate-related financial disclosure regime. It is also before the House of Representatives and has been referred to the Senate Economics Legislation Committee for review and report by 30 April 2024.

Finally, the Senate Economics References Committee is currently conducting an inquiry into improving consumer experience, choice and outcomes in Australia's retirement system, with reference to a lengthy list of factors, not all of which are directly related to the retirement system. The reporting date for this inquiry has recently been extended to 30 June 2025.

A guide to key changes

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

Date	Change
1 Jul 2024	Start date for website disclosure of certain information relating to employer-sponsored sub-plans previously subject to ASIC relief.
1 Jul 2024	SG to increase to 11.5%.
1 Jan 2025	Commencement of CPS 190 Recovery and Exit Planning for superannuation.
1 Jan 2025	Proposed commencement of revised version of SPS 515 Strategic Planning and Member Outcomes.
1 Jan 2025	Proposed commencement of revised version of SPS 114 Operational Risk Financial Requirement.
15 Mar 2025	Financial Accountability Regime commences for super fund trustees.
1 Jul 2025	SG to increase to 12.0%.
1 Jul 2025	Commencement of CPS 230 Operational Risk Management.
1 Jul 2025	Proposed commencement of Division 296 tax — additional earnings tax on super balances over $3 million.
1 Jan 2026	Commencement of section 29QC of the SIS Act.
1 Jul 2026	Proposed commencement of Payday Super requirements.
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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