



EXPLANATORY MEMORANDUM TO

PROFESSIONAL STANDARD 405:
COST OF DEATH AND DISABILITY BENEFITS IN SUPERANNUATION
FUNDS

June 2010

About this Explanatory Memorandum

This Explanatory Memorandum has been prepared to assist Members in understanding the revised Professional Standard 405 ("PS 405").

Introduction

On 1 March 2006, the Institute issued a Policy for Drafting Professional Standards (the "Policy") which was subsequently amended in June 2006. The Policy is designed to ensure that all Professional Standards use consistent and objective terminology such that mandatory duties and requirements for members are clearly defined and understood.

As a result, all existing Professional Standards and Guidance Notes are to be re-drafted in accordance with the Policy as either a Professional Standard or Practice Guideline.

The revised PS 405 was developed to convert and update, in accordance with the Policy, the then existing mandatory Guidance Note 450 (Cost of Death and Disability Benefits – Certificates by Actuaries under Sub-section 279(3) of the Income Tax Assessment Act) which was last issued in April 1993.

Consultation undertaken

An Exposure Draft of PS 405 was issued in February 2010. Four submissions were received.

One submission expressed concern that some Self Managed Superannuation Funds ("SMSFs") were using self insurance as a tax strategy and suggested that this Professional Standard prohibit Members certifying a self insurance premium under section 295-465 of the Income Tax Assessment Act 1997 (Cth) (the "Act") for SMSFs. This issue has been referred to the SMSFs Sub-committee of the Superannuation and Employee Benefits Practice Committee for further consideration and consultation with



members, including in the context of Practice Guideline 499.01 (Self Insurance for Superannuation Funds).

The Australian Tax Office ("ATO") confirmed that the Professional Standard accurately refers to Taxation Ruling IT 2617. The ATO noted that legislative changes have meant that the actuary's certificate is no longer required to be in a form approved in writing by the Commissioner and that Taxation Ruling IT 2617 was being reviewed.

Several editorial changes suggested in submissions were adopted.

Professional Standard requirements

Members' attention is drawn to the fact that a Professional Standard:

- ▶ details mandatory practice requirements (including the duty to exercise a discretion and a duty to properly explain an exercise of such discretion) in an area; and
- ▶ contains principles and/or directions from which it would be unprofessional to depart.

Key changes

The Professional Standard applies to a Member providing an actuarial certificate in respect of:

- ▶ superannuation death benefits;
- ▶ superannuation disability benefits; and
- ▶ income stream benefits because of a plan member's temporary inability to engage in gainful employment,

under section 295-465 of the Act. Prior to 1 July 2007, actuarial certification was provided under section 279 of the Income Tax Assessment Act 1936 (Cth). The primary change in the Professional Standard is to reflect the transfer of the legislative actuarial certification requirements to the Act.

The Act introduced prescribed definitions of superannuation death benefit, disability superannuation benefit and an income stream benefit because of a plan member's temporary inability to engage in gainful employment. Some funds may provide death or disability benefits which fall outside these definitions and, where this occurs, the determination of the deductible amount under PS 405 must relate only to those benefits which fall within the prescribed definitions, except as set out below in relation to the following two areas:



- ▶ superannuation disability benefits that do not meet the prescribed definition that were included in actuarial certificates under the previous legislation; and
- ▶ benefits paid on terminal medical condition.

On the former, the Minister for Financial Services, Superannuation and Corporate Law announced on 13 October 2009 that the Act would be amended to allow a deduction in accordance with past practice for disability benefits until 1 July 2011. Click [here](#) to access the media release. At the time of writing, a draft amendment had been released for comment. The draft fails to explicitly include self insured superannuation funds and the Institute is preparing a submission requesting amendments be made so that they are clearly included. At the time of writing, the Institute was working with other superannuation industry bodies to request that past practice in respect of the definition of superannuation disability benefits be able to be continued indefinitely.

On the latter, the 2010-11 Commonwealth Budget announced that legislation would be retrospectively amended to allow for the deductibility of insurance premiums for Terminal Medical Conditions. At the time of writing, this announcement was not yet law.

In preparing certificates while the above legislative changes are pending, if Members assume that the above legislative changes will be made, then the certificates should state this assumption clearly and also state that the Trustee may need to arrange for the certificate to be amended if the legislation changes do not proceed as has been assumed.

Reporting

Clause 1.1.2 provides that work performed under the standard is Prescribed Actuarial Advice. As such, Members must comply with the requirements of the Code of Professional Conduct applicable to such advice. Members are also referred to Practice Guideline 199.01 (Prescribed Actuarial Advice Reporting).

Commencement date

The new PS 405 commences on 1 July 2010.

END OF EXPLANATORY MEMORANDUM