



EXPLANATORY MEMORANDUM TO PROFESSIONAL STANDARD 408: PAYMENTS FROM SUPERANNUATION FUNDS TO EMPLOYERS

March 2013

About this Explanatory Memorandum

This Explanatory Memorandum has been prepared by the Superannuation Practice Committee ("SPC") to assist Members in understanding the new Professional Standard 408 (Payments from Superannuation Funds to Employers) ("PS 408") which replaces existing Guidance Note 459 (Payments from Superannuation Funds to Employers) ("GN 459").

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. As GN 459 was a "mandatory" guidance note, it has been converted into a Professional Standard.

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.

Exposure and consultation

In November 2012, an Exposure Draft of the proposed PS 408 (at the time, numbered as PS 4xx) was released for comment. One submission was received and the SPC thanks that member for their comments.

The submission received raised a question as to whether the proposed standard could make specific reference to the situation where the last member has left a Fund, but net assets remain in the Fund.

The SPC considered the submission, but took the view that the standard dealt adequately with such a situation in that, if such a Fund has no liabilities, then all the requirements set out in the standard would be met and the assets could be distributed to the employer. This, of course, would be subject to satisfying the requirements of the Fund's trust deed and the law. As such, no further change was made from the Exposure Draft.

Key changes

Key changes from GN 459 may be summarised as:

- ▶ updating GN 459 to be in accordance with the requirements of the Policy (as discussed above) and for changes to the Code since GN 459 was first issued;
- ▶ reflecting legislative changes since GN 459 was issued;
- ▶ removing material where the substance of that material was dealt with in other professional standards or merely provided background information;
- ▶ the period between the effective date of the calculations and the date of signing the certificate has been reduced from twelve to six months;
- ▶ the requirement in section 2 of GN 459 for the actuary to "consider other significant events of which he or she is aware, which have occurred between the effective date of the calculations and the date of certification, and determine whether to take such events into account in the calculations, or whether to alert the trustees to their general effect" has been removed, as this material is covered in section 11 of PS 408;
- ▶ section 11 of PS 408 ("Events Following the Effective Date of Calculation"), which replaces section 8 of GN 459, now includes requirements to:
 - provide examples in the certificate to demonstrate the sensitivity of the Fund's financial position to possible future events; and

- ensure the trustee is aware of what would occur if the Fund were terminated when the Fund was not in a Satisfactory Financial Position;

- ▶ section 12 of PS 408 ("Future Contributions"), which replaces section 9 of GN 459, now includes a requirement to disclose in the certificate whether the Member considers that a change in investment policy, insurance arrangements or any other policy is appropriate as a result of a repatriation;

- ▶ removing section 11 of GN 459, which set out an 'alternative simple approach'; and

- ▶ retaining section 14 on "Payment by Instalments". At the time of the release of the Exposure Draft of PS 408, Members' views were invited on whether this section should be retained and, if so, whether a time limit should be placed on the period over which instalments could be paid. No comments were received.

Whilst SIS Regulation 9.04 defines "unsatisfactory financial position" for the purposes of section 130 of the SIS Act, no definition of "satisfactory financial position" is specified for the purposes of section 117 of the SIS Act. The requirements specified in clause 4 of PS 408 for certification of a Satisfactory Financial Position under section 117 of the SIS Act, which are potentially more onerous than not being in an "unsatisfactory financial position" for the purposes of section 130 of the SIS Act, have been adopted to reflect the purposes of the certification.

Commencement date

PS 408 commences on 1 April 2013.

END OF EXPLANATORY MEMORANDUM