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**PROFESSIONAL STANDARD 406**

**UNSEGREGATED SUPERANNUATION LIABILITIES**

**March 2020**

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**INDEX**

<b>1. INTRODUCTION .....</b>	<b>2</b>
1.1. Application .....	2
1.2. About this standard .....	2
1.3. Legislation and other requirements .....	3
<b>2. COMMENCEMENT DATE .....</b>	<b>3</b>
<b>3. DEFINITIONS .....</b>	<b>3</b>
<b>4. LEGISLATIVE REQUIREMENTS .....</b>	<b>5</b>
<b>5. CALCULATION OF PENSION LIABILITIES AND SUPERANNUATION LIABILITIES .....</b>	<b>7</b>
5.1. General .....	7
5.2. Account Based Benefits .....	7
5.3. Defined Benefits .....	7
5.4. Partially funded State public sector schemes .....	9
5.5. Reserves .....	9
5.6. Treatment of contingent benefits .....	10
<b>6. CALCULATION OF AVERAGES .....</b>	<b>11</b>
<b>7. ACTUARIAL CERTIFICATE .....</b>	<b>11</b>
<b>8. MISCELLANEOUS .....</b>	<b>13</b>

## 1. Introduction

### 1.1. Application

1.1.1. This Professional Standard applies to a Member providing an actuarial certificate for the purposes of section 295-390 of the Income Tax Assessment Act 1997. This Standard is relevant to funds providing superannuation income stream benefits. Superannuation income stream benefits may be account based or defined benefits.

1.1.2. A Member who provides advice performed under clause 1.1.1 of this Professional Standard:

- (a) must be an Eligible Actuary; and
- (b) must exercise his or her independent professional judgement and give impartial advice.

Work performed under this Professional Standard is designated as an Applicable Service. As such, the Member's attention is directed towards the requirements of Practice Guideline 1 (General Actuarial Practice).

1.1.3. This version of the Professional Standard incorporates additional conformance changes to align with the Institute's new Code (effective 31 March 2020).

### 1.2. About this standard

1.2.1. This Professional Standard:

- (a) has been prepared in accordance with the Institute's Policy for Developing Documents to Guide and Regulate Professional Practice;
- (b) must be applied in the context of the Code;
- (c) binds Members of the Institute when they perform work that the Standard covers; and
- (d) defines the Institute's requirements for all work the Standard covers.

1.2.2. If a Member believes that this Professional Standard is ambiguous or wishes to seek clarification of it, then they may consult the Institute's Professional Standards Committee for an interpretation.

1.2.3. If a Member finds that they cannot carry out their work in a way that complies with this Professional Standard then they must either:

- (a) decline to carry out the work; or
- (b) end their agreement to do so.

1.2.4. If a Member does not comply with this Professional Standard, then that may constitute Misconduct under the Institute's Disciplinary Scheme.

1.2.5. This Professional Standard does not constitute legal advice. Any interpretation or commentary within this Professional Standard regarding specific legislative or regulatory requirements reflects the expectations of the Institute but does not guarantee compliance under applicable legislation or regulations. Accordingly, the Member should seek clarification from the relevant regulator and/or seek legal advice in the event they are unsure or require specific guidance regarding their legal or regulatory obligations.

### **1.3. Legislation and other requirements**

1.3.1. Legislation and other requirements which may be relevant to the work covered by this Professional Standard include:

- (a) the Income Tax Assessment Act 1997 (Cth);
- (b) Income Tax Assessment Regulations 1997 (Cth);
- (c) Superannuation Industry (Supervision) Act 1993 (Cth); and
- (d) Superannuation Industry (Supervision) Regulations 1994 (Cth).

1.3.2. A reference to legislation or a legislative provision in this Professional Standard includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision.

1.3.3. Apart from the Code, from legislation or from regulatory standards, no other document, advice or consultation (including Practice Guidelines of the Institute) can be taken to modify or interpret the requirements of this Professional Standard.

1.3.4. If there is a conflict between this Professional Standard and any legislation, then the legislation takes precedence, and best practice is to document any differences in the Member's report. In this context, legislation includes regulations, prudential standards, subordinate standards, accounting standards, rules issued by government authorities, and standards issued by professional bodies which have the force of law.

## **2. Commencement Date**

This Professional Standard applies to actuarial certificates in respect of financial years commencing on or 1 July 2017 that are issued on or after 31 March 2020.

## **3. Definitions**

3.1 In this Professional Standard:

**'Act'** means the Income Tax Assessment Act 1997 (Cth).

**'Applicable Services'** means Services that are designated in an Institute Professional Standard or Practice Guideline as being Applicable Services.

**'APRA'** means the Australian Prudential Regulation Authority.

**'Asset'** means an investment owned by the superannuation fund from which future economic benefits are expected to flow to the superannuation fund.

**'ATO'** means the Australian Taxation Office.

**'average value of current pension liabilities'** is as defined in the Act.

**'average value of superannuation liabilities'** is as defined in the Act.

**'Code'** means the Code of Conduct of the Institute.

**'Deferred superannuation income stream'** is as defined in SIS Regulation 1.03.

**'Defined Benefit Pension'** is as defined in SIS Regulation 9.04E.

**'Defined Benefit Superannuation Fund'** has the same meaning as 'defined benefit fund' in SIS Regulation 1.03. The term includes any superannuation fund from which Defined Benefit Pensions are paid, where those pensions are not fully backed by annuity contracts or otherwise fully insured.

**'Disciplinary Scheme'** means the document of that name prepared by the Institute setting out the rules and procedures governing professional discipline of a Member, as amended by Council from time to time.

**'Disregarded small fund assets'** is as defined in section 295-387 of the Act.

**'Eligible Actuary'** means:

- (a) a Fellow or Accredited Member of the Institute; or
- (b) a Member who is eligible to act in an actuarial capacity pursuant to a requirement under legislation.

**'Fund Sponsor'** means either the employer-sponsor of a superannuation fund (as defined in section 16 of the SIS Act) or, in the case of a Self-Managed Superannuation Fund, the individual or individuals who make, or ordinarily make, contributions to the Self-Managed Superannuation Fund.

**'ITAR'** means the Income Tax Assessment Regulations 1997 (Cth).

**'Material'** means relevant to a fund's circumstances and is either important or essential in the opinion of the Member. For this purpose, 'Material' does not have the same meaning as in Australian accounting standards. 'Materiality' has a consistent meaning to 'Material'.

**'Net Assets'** means the assets that are available to meet superannuation liabilities after making appropriate adjustments for any accrual items such as receivables, payables

and other amounts due. Net Assets includes any assets set aside in an APRA regulated fund to meet the Operational Risk Financial Requirement in accordance with SPS 114.

'**Operational risk financial requirement (ORFR)**' is the amount determined as per paragraph 8 of SPS 114.

'**Operational Risk Reserve**' is the reserve holding the assets (if any) set aside in an APRA regulated fund to meet the Operational Risk Financial Requirement.

'**PS 400**' means Professional Standard 400.

'**Retirement Phase**' means 'retirement phase' as defined in section 307-80 of the Act.

'**RP superannuation income stream**' or '**RP pension**' means a superannuation income stream from which a Retirement Phase superannuation income stream benefit is payable.

'**RP superannuation income stream benefit**' is a Retirement Phase superannuation income stream benefit as defined in section 307-75 of the Act.

'**RSE actuary**' has the meaning given in section 10(1) of the SIS Act (a person who is or has been appointed as an actuary of a registrable superannuation entity).

'**Segregated Current Pension Assets**' is as defined in section 295-385 of the Act.

'**Segregated Non-current Assets**' is as defined in section 295-395 of the Act.

'**Self-Managed Superannuation Fund (SMSF)**' is as defined in section 17A of the SIS Act.

'**SIS Act**' means the Superannuation Industry (Supervision) Act 1993 (Cth).

'**SIS Regulations**' means the Superannuation Industry (Supervision) Regulations 1994 (Cth) (as modified by any Modification Declaration issued by APRA from time to time).

'**SPS 114**' means APRA Superannuation Prudential Standard 114 Operational Risk Financial Requirement.

'**SPS 160**' means APRA Superannuation Prudential Standard 160 Defined Benefit Matters.

'**superannuation income stream**' is as defined in ITAR regulation 995-1.01.

'**Value of Liabilities**' means the value defined in section 295-390 (4) of the Act.3.2 A word that is derived from a defined word has a corresponding meaning.

3.3 Other capitalized terms used in this Professional Standard have the same meaning as set out in the Code.

## 4. Legislative Requirement

4.1 The Act requires the determination of:

- i. "average value of current pension liabilities" and
- ii. "average value of superannuation liabilities"

Specifically, s 295-390 (4) of the Act states:

“Actuary's certificate

The value of particular liabilities of the fund at a particular time is the amount of the fund's assets, together with future contributions in respect of the benefits concerned and expected earnings on the assets and contributions after that time, that would provide the amount required to discharge those liabilities as they fall due. This must be specified in an actuary's certificate obtained by the trustee of the fund before the date for lodgement of the fund's income tax return for the income year.”

- 4.2 An RP superannuation income stream benefit payable from a superannuation fund is specifically defined in section 307-75 of the Act. It relies on other definitions including retirement phase, deferred superannuation income stream and superannuation income stream. Superannuation income stream is defined in ITAR regulation 995-1.01 by reference to provisions relating to pensions and annuities in the SIS Act and Regulations. Note an exception is that, under part (b) of the definition in ITAR regulation 995-1.01, a pension which does not meet the requirements of a pension under the SIS Regulations may still be a superannuation income stream if it is a pension within the meaning of the SIS Act and it commenced before 20 September 2007. To be included in the determination of “average value of current pension liabilities” a pension must meet the ITAR regulation 995-1.01 definition of superannuation income stream and be in Retirement Phase.
- 4.3 The actuary must document whether the RP superannuation income streams valued have been checked to confirm that they met the requirements of the Act in the relevant year, or whether an assessment by some other party (e.g. the trustee or the auditor) has been relied upon.
- 4.4 For a fund with no Segregated Current Pension Assets or Segregated Non-current Assets, section 295-390 (6) of the Act permits the value of total superannuation liabilities (but not current pension liabilities) to be ascertained from the last value of superannuation liabilities (as defined in section 295-390(6) of the Act). A Member must not adopt this approach in respect of a Self-Managed Superannuation Fund, a Small APRA Fund or a sub-fund of an APRA regulated fund having a number of members less than or equal to four; in these cases, the value of pension liabilities and superannuation liabilities must be calculated each year.
- 4.5 In its 23 August 2017 letter to the Institute the ATO promulgated its view that, where a fund's only superannuation liabilities at a particular time are in respect of RP superannuation income stream benefits prescribed by the relevant regulations, sections 295-285(4) & (5) mean that the assets supporting those income streams are deemed to be Segregated Current Pension Assets at that time, even if this applies for only part of an income year. The regulations prescribe allocated pensions, market-linked pensions and account-based pensions, as defined in the SIS Regulations, for the purposes of these sections. Therefore, Segregated Current Pension Assets, whether held for all or part of a year, must be excluded from the calculation of the tax-exempt proportion under section 295-390 of the Act.

- 4.6 A fund with Disregarded Small Fund Assets cannot have Segregated Current Pension Assets or Segregated Non-Current Assets.
- 4.7 The actuary's certificate applies for an income year, i.e. the full year. A certificate must not be issued in respect of only part of a year. This applies even if pension assets have been segregated for part of the year, or where all liabilities became current pension liabilities part way through a year.

## **5. Calculation of Pension Liabilities and Superannuation Liabilities**

### **5.1 General**

- 5.1.1 This Standard applies to superannuation funds providing account based pensions as well as Defined Benefit Pensions.
- 5.1.2. In the determination of assumptions to be used in valuing both the current pension liabilities and superannuation liabilities (which includes current pension liabilities as well as all other superannuation benefit liabilities), the Member must have regard to the particular experience and circumstances of the fund.
- 5.1.3 Where the superannuation fund is required to have an actuarial investigation by SPS 160, or by SIS Regulation 9.29, the assumptions adopted must be consistent with the "best estimate" assumptions used in the most recent actuarial valuation completed to meet legislative requirements, unless particular reasons suggest a change.
- 5.1.4. The Member must use "best estimate" assumptions, notwithstanding the high degree of probability implied by a positive statement under SPS 160 paragraph 23(h) (i.e. "if the fund is paying a defined benefit pension to at least one defined benefit member of the fund, a statement of the RSE actuary's opinion on whether, at the valuation date, there is a high degree of probability that the fund will be able to pay the pension as required under the fund's governing rules") or, in the case of an SMSF, under SIS Regulation 9.31.

### **5.2. Account Based Benefits**

- 5.2.1 The current pension liability in respect of a RP superannuation income stream that is based on an account balance must, in the absence of unusual terms or guarantees, be taken to be the balance of the individual pension account.

### **5.3. Defined Benefits**

- 5.3.1 For a Defined Benefit Superannuation Fund the values of current pension liabilities and superannuation liabilities for the purposes of the formula in section 295-390 of the Act must be determined as prescribed in PS 400 on a "best estimate" basis. The values must be consistent with those in a valuation subject to PS 400.

- 5.3.2 Section 295-390 (4) of the Act specifies the method by which the value of liabilities is to be calculated. For the avoidance of doubt, the values of Defined Benefit Pension liabilities and superannuation liabilities must include allowance for the best estimate administrative and operational expenses associated with those liabilities.
- 5.3.3. Where there are members other than current pensioners, the value of defined benefit superannuation liabilities must take into account future service/membership liabilities as well as past service/membership liabilities and be determined after deduction of the value of future contributions in respect of all benefits as required under section 295-390(4) of the Act.
- 5.3.4 Where a fund only has Defined Benefit Pension liabilities and future contributions are not payable in respect of Defined Benefit Pensions, the value of superannuation liabilities for the purposes of the formula in section 295-390 of the Act must be determined as the “best estimate” present value of future Defined Benefit Pension liabilities and will be equal to the value of current pension liabilities. Under current legislation no future contributions are payable in respect of SMSF Defined Benefit Pensions.
- 5.3.5 Where a fund only has Defined Benefit Pension liabilities and future contributions are payable in respect of Defined Benefit Pensions, the value of superannuation liabilities for the purposes of the formula in section 295-390 of the Act must be determined as the “best estimate” present value of future benefits payable and expenses, less the value of future contributions in respect of those benefits as required under section 295-390(4) of the Act.
- 5.3.6 Note that generally the value of future contributions required to fund the future benefits will be equal to the difference between the value of the future benefits payable and the assets currently available to meet those benefits. As a result, the value of superannuation liabilities required to be used for the purposes of the formula in section 295-390 of the Act:
- for an SMSF will in most cases equal Net Assets; and
  - for an APRA regulated fund will in most cases equal Net Assets less the Operational Risk Reserve (ORR) assets, if any) (see paragraph 5.5.1).
- 5.3.7 The result in paragraph 5.3.6 arises because it is generally reasonable to expect that all the assets of a superannuation fund (other than any ORR assets for an APRA regulated fund) will be used to provide superannuation benefits in respect of current members. Section 5.5 provides examples of circumstances in which a reserve other than an ORR may not be expected to be used to provide superannuation benefits for existing members and thus contribute to a difference between Net Assets and superannuation liabilities.



- 5.3.8 In many cases therefore, the value of superannuation liabilities may be calculated as Net Assets less any reserve amounts that are not be expected to be used to provide superannuation benefits for existing members, rather than requiring a valuation of all the non-pension liabilities.
- 5.3.9 Similarly, where a defined benefit fund has an amount of surplus which is expected to be refunded to an employer sponsor rather than being used to pay benefits to existing members, the approach referred to in paragraph 5.3.8 may be followed, in this case also deducting the amount of surplus which is expected to be refunded to an employer sponsor.
- 5.3.10 Paragraph 5.3.6 does not apply where the assets of a defined benefit fund are in excess of the amount expected to be sufficient to fund all future benefits for all existing members (including accumulation members, to the extent that future benefits for accumulation members can be funded from defined benefit assets) without any further employer contributions. In this case, the approach referred to in paragraph 5.3.8 cannot be applied; rather a valuation of all the non-pension liabilities (along with a valuation of the current pension liabilities) must be performed to determine the value of superannuation liabilities.

#### **5.4. Partially funded State public sector schemes**

Members serving as actuaries of partially funded State public sector superannuation schemes should be cognisant that the ATO is considering whether, on one view, the approach has the potential to establish exempt proportions certified for some such schemes that are higher than may have been intended having regard to the scheme's funding arrangements and position. Affected Members must make their clients aware of the situation in writing and suggest that their clients may wish to consider obtaining their own tax advice and/or legal advice on the matter.

#### **5.5. Reserves**

- 5.5.1 A fund may hold a number of reserves, for example:
- i. Administration reserve: this may be used to cover the risk of unexpected increases in future administration and operational expenses of a superannuation fund or sub-fund and, for an indefinitely continuing fund at least, may not be expected to be used to provide superannuation benefits for existing members.
  - ii. Operational Risk Reserve (ORR): this may be used to hold some or all of the financial resources to meet an RSE licensee's Operational Risk Financial Requirement. Note that SPS 114 includes specific requirements in relation to the use of ORR assets and generally requires replenishment of the ORR if it is utilised. In most cases it would seem reasonable to expect that the ORR will not be used to provide superannuation benefits for existing members. (An example of an

exception is where a distribution of the ORR is expected, such as where wind-up of the fund is imminent.)

- iii Self-insurance claims fluctuations reserve: RSE licensees that are permitted to self-insure insured benefits are required under SPS 160 to maintain reserves, or have other arrangements approved by APRA, to fund current and future self-insurance liabilities. Where reserves are used, these may include a claims fluctuation reserve as well as an incurred claims reserve. An incurred claims reserve, to the extent that it covers the best estimate of incurred (including incurred but not reported) claims, is expected to be used to provide superannuation benefits for existing members. In an indefinitely continuing fund any claims fluctuations reserve is likely to be carried forward for the benefit of future members. In a closed fund in run-off the claims fluctuations reserve may be used to provide superannuation benefits for existing members.

5.5.2 Where the approach referred to in paragraph 5.3.8 is being applied to determine superannuation liabilities, Members must only deduct reserve amounts which are not expected to be used to provide superannuation benefits for existing members.

5.5.3 Members must exercise professional judgement in determining the extent (if any) to which a reserve is not expected to be used to provide superannuation benefits for existing members.

## **5.6. Treatment of contingent benefits**

5.6.1 The definition of current pension liabilities depends on the fund's obligation (whether contingent or not) to pay RP superannuation income stream benefits. Hence, in the valuation of current pension liabilities the actuary must allow for all future superannuation income stream benefits expected to be made to a current RP pensioner (including the holder of a deferred superannuation income stream in the retirement phase) as well as all income stream benefits the Trustee has a contingent obligation to make at some future time in respect of current RP pensions. This includes income stream benefits or components of income stream benefits that will become payable on the death of a current RP pensioner.

5.6.2 In some funds it is possible for a pensioner with a reversionary spouse pension entitlement to commute part or all of the primary pension without affecting the spouse reversionary pension entitlement. Contingent reversionary income stream benefits relating to a fully commuted primary pension are superannuation liabilities but not current pension liabilities. If the commutation was for only part of the pension so that there is still a current pension payable then both the pension in payment and the full spouse reversion in respect of the pension before commutation are current pension liabilities.

5.6.3 A RP superannuation income stream does not include all superannuation income streams as specified in the definition of retirement phase. In particular, it does not

include certain types of 'transition to retirement' income streams, as set out in section 307-80(3)(a) of the Act, where a specified condition of release has not been satisfied or the fund has not been notified that the specified condition of release has been satisfied. However a defined benefit 'transition to retirement' pension (i.e. a non-commutable lifetime pension commenced under the 'attaining preservation age' condition of release on the basis that it is a 'non-commutable pension' as defined in SIS Regulation 6.01') is not excluded from being a RP superannuation income stream.

## 6. Calculation of Averages

- 6.1 The sections above relate to the calculation of current pension liabilities and superannuation liabilities at a particular time. For the purposes of section 295-390 of the Act, the Member is required to calculate the average of these amounts over a particular income year.
- 6.2 Sometimes the average can simply be calculated as the arithmetic mean of the opening and closing values of the applicable liability. However often payments are not uniform, particularly for SMSFs: contributions in June are common, and pension payments often do not occur uniformly across a year. The average must be appropriately weighted to allow for any events that have a Material and uneven impact on the relative size of these liabilities over the year or at particular times during the year. Such events (which may not always be evident from the financial statements) may include:
- (a) contributions, rollovers or benefit payments (including pension payments) that occur at irregular times rather than regularly throughout the year;
  - (b) the commencement or termination of a pension during the year;
  - (c) changes in asset values with consequent changes in a significant part of the fund's liabilities at a particular time during the year rather than throughout the year.
- 6.3 Where an adjustment of the type referred to in Section 6.2 would affect both the average current pension liabilities and the average superannuation liabilities but would not have a Material impact on the ratio of the two, it is not necessary to make any such adjustment to the liability amounts.
- 6.4 In some cases, the calculation of current pension liabilities and superannuation liabilities depends on the proportion of the fund's income which is exempt from tax as a result of an actuarial certificate provided under section 295-390 of the Act. If the calculations are iterative the Member may rely on draft financial statements provided that doing so has no Material impact on the proportion of income which is exempt from tax.

## 7. Actuarial Certificate

- 7.1 Whilst it is not necessary for an actuarial certificate required under section 295-390 of the Act to accompany the fund's tax return, it is still necessary for the Member to provide such a certificate to the Trustees on or before the lodgement of the fund's income tax return for that income year.
- 7.2 The actuarial certificate must provide the following information:
- (i) the name of the complying superannuation fund covered by the certificate;
  - (ii) the name of the trustee, if an entity, or otherwise the full name of one of the trustees of the fund;
  - (iii) the year of income covered by the certificate;
  - (iv) the date to which the values of the assets and liabilities of the fund relates (i.e., the "particular time" for the purposes of section 295-390 of the Act);
  - (v) the value of the current RP superannuation income stream liabilities of the fund at that date, not including liabilities in respect of which any Segregated Current Pension Assets are held;
  - (vi) a description of the pension benefits which have been valued;
  - (vii) whether the actuary has checked that the pensions valued meet the requirements to be considered a RP superannuation income stream under the Act in the relevant year of income, or whether an assessment by another party has been relied upon and (in this situation) who is the relevant party (e.g. the trustee or auditor);
  - (viii) the value of the superannuation liabilities of the fund at that date, not including liabilities in respect of which any Segregated Current Pension Assets or Segregated Non-current Assets are held;
  - (ix) the value of the Net Assets of the fund at that date;
  - (x) a summary of the data on which the certificate is based;
  - (xi) a statement of the assumptions used to value the benefits, including:
    - the rate of any assumed increase in pension liability and the reasons for this assumption, and
    - the earning rate adopted in determining the value of the particular liabilities if applicable

Where no assumptions are required to perform the calculations in this Professional Standard, a statement to this effect must be included in lieu of specifying particular assumptions;

- (xii) a statement as to whether the calculations have been based on draft or audited financial statements and (if the former) the circumstances (if any) under which a certificate based on draft financial statements should be revised;
- (xiii) the average value of the current pension liabilities of the fund during the year of income, not including liabilities in respect of which any Segregated Current Pension Assets are held;
- (xiv) the average value of the superannuation liabilities of the fund during the year of income, not including liabilities in respect of which any Segregated Current Pension Assets or Segregated Non-current Assets are held;
- (xv) statement of the exempt proportion of the fund's income (excluding income from Segregated Current Pension Assets and Segregated Non-current Assets);
- (xvi) where relevant, the expected rate of the fund's earnings on assets (other than segregated assets);
- (xvii) the estimated rate or amount of any recommended future contributions at that date;
- (xviii) confirmation that the values of liabilities set out in the certificate have been determined in accordance with this Professional Standard;
- (xix) a statement that the actuary is satisfied that the value of particular liabilities of the fund at a particular time as set out in the certificate is the amount of the fund's assets, together with any future contributions in respect of the benefits concerned and expected earnings on the assets and contributions after that time, that, would provide the amount required to discharge those liabilities as they fall due;
- (xx) the name, address and qualifications of the actuary giving the certificate;
- (xxi) the date of the certification; and
- (xxii) the actuary's signature.

## **8. Miscellaneous**

The Member undertaking the work must be familiar with the operations of the fund or the arrangements must be sufficiently straightforward that the certificate can be provided in isolation (for example, a fund providing no defined benefits).

**END OF PROFESSIONAL STANDARD 406**