

## PROFESSIONAL STANDARD 408

### PAYMENTS FROM SUPERANNUATION FUNDS TO EMPLOYERS

March 2020

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## **1. INTRODUCTION**

### **1.1 Application**

- 1.1.1 This Professional Standard applies to Members certifying whether a complying superannuation Fund would remain in a “satisfactory financial position” under the SIS Act after the repayment of an amount to an employer.
- 1.1.2 This version of the Professional Standard incorporates additional conformance changes to align with the Institute’s new Code (effective 31 March 2020).
- 1.1.3 A Member who provides advice performed under this Professional Standard:
- (a) must be an Eligible Actuary; and
  - (b) must exercise his or her independent professional judgement and give impartial advice.
- 1.1.4 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).

### **1.2 About this Professional Standard**

- 1.2.1 This Professional Standard has been prepared in accordance with the Institute’s Policy for Developing Documents to Guide and Regulate Professional Practice. It must be applied in the context of the Code. In particular, the Member is reminded of his or her obligations under the Code when signing a certificate in circumstances where another Member has recently provided actuarial advice in relation to the Fund.
- 1.2.2 This Professional Standard is binding on Members of the Institute in respect of all work covered by the Professional Standard.
- 1.2.3 Non-compliance with this Professional Standard by a Member engaged in work covered by the Professional Standard may constitute Misconduct and may lead to penalties under the Institute’s Disciplinary Scheme.
- 1.2.4 This Professional Standard in itself defines the requirements of the Institute in respect of all work covered by the Professional Standard. If a Member believes that the Professional Standard is ambiguous or for some other reason wishes to seek clarification of it, that Member may consult the Institute’s Professional Standards Committee for guidance as to the interpretation of the Professional Standard. Apart from legislation or 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.

1.2.5 Members who find that they cannot carry out work in a manner that complies with this Professional Standard must decline to carry out the work, or terminate their agreement to do so.

1.2.6 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, Members 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 Background**

Among other requirements, before a trustee resolves that an amount may be paid out of a Fund to an employer, section 117(5)(c)(i) of the SIS Act requires that an actuary has given a written certificate to the trustee stating that, if the amount were paid, the Fund would remain in a satisfactory financial position.

### **1.4 Purpose**

The purpose of this Professional Standard is to direct Members in performing the work referred to in clause 1.1.

### **1.5 Previous versions**

The previous version of this Professional Standard, issued in March 2013, replaced Guidance Note 459 (Payments from Superannuation Funds to Employers) issued in September 1994.

### **1.6 Legislation and other requirements**

1.6.1 The legislation relevant to this Professional Standard is:

- (a) the SIS Act; and
- (b) the SIS Regulations.

1.6.2 This Professional Standard must be considered in the context of applicable legislation. If there is a conflict between this Professional Standard and any applicable legislation, then the legislation takes precedence, and any differences must be documented. In this context, legislation includes regulations, prudential standards, subordinate standards, rules issued by government authorities and standards issued by professional bodies which have the force of law.

1.6.3 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. Similarly, a reference to a Professional Standard includes any modification or replacement of such.

## 2. COMMENCEMENT DATE

This Professional Standard takes effect on and from 31 March 2020.

## 3. DEFINITIONS

### 3.1 In this Professional Standard:

**'Accrued Benefit'** means the amount of a prospective benefit attributable to past membership or service to the relevant date, where the apportionment is in accordance with PS 402.

**'Actuarial Value of Accrued Benefits'** means the present value of expected future benefit payments which is determined in accordance with PS 402, based on projected salaries and other assumptions, as arising from Membership completed up to the effective date of determination.

**'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 (or its successors from time to time).

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

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

**'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.

**'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'** means a standard employer sponsored fund as defined in section 16 of the SIS Act.

**'Material'** means relevant to the 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.

**‘Membership’** means, except where otherwise specified, the period used to determine benefits as appropriate in the particular circumstances.

**‘Minimum Requisite Benefit’** in relation to a Fund member, means the benefit certified by a Member in a relevant benefit certificate as the minimum benefit in respect of the Fund member.

**‘Net Market Value’** means, in accordance with Australian Accounting Standard AAS 25 (Financial Reporting by Superannuation Plans), the amount which could be expected to be received from the disposal of an Asset in an orderly market after deducting all the costs expected to be incurred in realising the proceeds of such a disposal.

**‘Net Market Value of the Fund’s Assets’** means the sum of the Net Market Value of each of the Fund’s Assets minus the Operational Risk Financial Requirement.

**‘Operational Risk Financial Requirement’** is defined in APRA’s Prudential Standard SPS 114 (Operational Risk Financial Requirement).

**‘PS 400’** means Professional Standard 400 (Investigations of the Financial Condition of Defined Benefit Superannuation Funds).

**‘PS 402’** means Professional Standard 402 (Determination of Accrued Benefits for Defined Benefit Superannuation Funds).

**‘PS 404’** means Professional Standard 404 (Valuation of Superannuation Fund Assets).

**‘Satisfactory Financial Position’** is as defined in section 4 of this Professional Standard.

**‘SGC’** means the Superannuation Guarantee Charge (as defined in section 6 of the Superannuation Guarantee (Administration) Act 1992 (Cth)).

**‘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).

**‘Vested Benefit’** means the benefit (or the value of the benefit where appropriate – for example, where benefits are in the form of a pension or deferred benefit) to which the Fund member would have the right to payment if the Fund member voluntarily ceased employment, subject to a minimum of the Minimum Requisite Benefit.

- 3.2 A word that is derived from a defined word has a corresponding meaning.
- 3.3 Other capitalised terms used in this Professional Standard have the same meaning as set out in the Code.

#### **4. “SATISFACTORY FINANCIAL POSITION”**

- 4.1 A Fund can be regarded as being in a “satisfactory financial position” for the purposes of section 117 of the SIS Act if, and only if, all of the following are satisfied after any payment from the Fund to the sponsoring employer (other than payment of a reasonable amount for services rendered in connection with the management or operation of the Fund) and after any benefit improvements which may be provided in conjunction with such a payment:
- (a) the actuarially determined value of the Fund’s Assets exceeds the Actuarial Value of Accrued Benefits (as set out in clause 7); and
  - (b) if the Fund is being used by any employer to offset the employer’s SGC obligation in respect of some of its employees, any existing funding and solvency certificate remains valid or the Member can sign a new funding and solvency certificate; and
  - (c) the Net Market Value of the Fund’s Assets exceeds the Vested Benefits; and
  - (d) a statement equivalent to that required under SIS Regulation 9.31(1)(d) can be made by the Member in respect of the following three year period.
- 4.2 A defined contribution superannuation Fund can be regarded as being in a Satisfactory Financial Position for the purposes of section 117 of the Act if, and only if, clauses 4.1(a) and 4.1(c) of this Professional Standard apply.

The remainder of this Professional Standard deals primarily with defined benefit superannuation Funds. However, where relevant, this Professional Standard also applies for defined contribution Funds.

#### **5. EFFECTIVE DATE**

- 5.1 Section 117 of the SIS Act requires the trustee to obtain a certificate from an actuary prior to resolving to make a payment to the employer and prior to giving Fund members three months’ notice of the intention to make a payment to the employer. Thus it is not possible to carry out the necessary calculations and sign the required certificate at the same time as the repatriation of surplus occurs.
- 5.2 As a Fund’s financial position varies from day to day, the Member must allow for differences between:
- (a) the effective date of the calculations;
  - (b) the date of signing the certificate; and
  - (c) the date of the payment.

5.3 Due to the nature of section 117 of the SIS Act, the payment date will be the last of the three dates in clause 5.2 of this Professional Standard. The Member must, in the certificate, alert the trustee to the possible need to vary the amount paid to the employer to allow for events occurring between the effective date of the calculations and the date of the payment.

5.4 The Member must take all practical steps to keep the period between the effective date of the calculations and the date of signing the certificate as short as possible and, in no case, may this period be more than six months.

## **6. VALUATION OF ASSETS**

6.1 In placing a value on the Assets for the purposes of the investigation, the Member must comply with PS 404.

6.2 The method of valuing the Assets must:

(a) have regard to the purpose of the valuation (to determine whether the Fund is in a Satisfactory Financial Position after an amount is paid to an employer);

(b) be consistent with the method and assumptions used for determining the value of liabilities; and

(c) have regard to the nature of the Assets held by the Fund.

6.3 Members' attention is drawn to the fact that the "actuarially determined value of the Fund's Assets" for the purposes of clause 4.1(a) of this Professional Standard and the "Net Market Value of the Fund's Assets" for the purposes of clause 4.1(c) of this Professional Standard may differ to ensure consistency between the valuation of Assets and liabilities.

6.4 The Member may need to consider which particular Assets will be sold to enable the payment to the employer, and therefore which Assets will remain afterwards. The impact on the Fund of the liquidity of the Fund's remaining Assets must be considered by the Member. The Member must also consider the need to allow for any tax liability arising due to the sale of Assets necessary to achieve the payment to the employer.

## **7. APPORTIONMENT OF BENEFITS BETWEEN PAST AND FUTURE MEMBERSHIP**

7.1 As required by the definitions of Accrued Benefits and the Actuarial Value of Accrued Benefits, the method used to apportion benefits between past and future Membership must be consistent with PS 402.

### **7.2 Accumulation benefits**

7.2.1 PS 402 sets out how vesting factors, reserves and other designs are to be treated in calculating Accrued Benefits for accumulation benefits.

7.2.2 PS 402 permits, if the Member considers it appropriate in the circumstances, the use of the vesting factor, if any, at the date of determination. The Member must assume full vesting for determining whether the Fund is in a Satisfactory Financial Position.

### **7.3 Defined benefits**

PS 402 sets out the approach to calculate Accrued Benefits for defined benefits.

## **8. VALUATION ASSUMPTIONS**

8.1 The financial and demographic assumptions used to determine the Actuarial Value of Accrued Benefits and Vested Benefits, if assumptions are necessary for the determination, must reflect the assumptions that the Member would use for funding purposes in accordance with PS 400.

8.2 The Member must also consider the effect on the Vested Benefits of valuing pension benefits on an equivalent market basis (that is, the amount determined as being required to be paid to a third party to take on the liability) and disclose this in the certificate. This may require the use of different assumptions to those adopted for funding purposes in accordance with PS 400.

## **9. VESTED BENEFITS**

The Vested Benefits must be determined in accordance with the methodology the Member would use for funding purposes in accordance with PS 400.

## **10. RETRENCHMENT BENEFITS**

10.1 Where the Fund is in a Satisfactory Financial Position, the Net Market Value of the Fund's Assets may or may not exceed the total value of the benefits which would be payable if all Fund members were to be retrenched on the relevant date.

10.2 Where the Member considers that, taking into account:

- (a) the size of the Fund;
- (b) the amount of retrenchment benefits; and
- (c) the likely circumstances of the employer(s) in the foreseeable future,

the probability of future retrenchments jeopardising the Fund's financial position is negligible, the Member may provide the requested certificate, even if the Net Market Value of the Fund's Assets does not cover retrenchment benefits.



- 10.3 Whatever the case, the Member must include in the certificate the ratio of the Net Market Value of the Fund's Assets to the value of retrenchment benefits.
- 10.4 The trustee must be alerted in the Member's certificate to the potential impact of future retrenchments on the Fund's financial position, where it is relevant to do so.
- 10.5 Where the retrenchment benefit takes the form of an equitable share of the Assets, or some comparable approach, the Member must alert the trustee in the certificate to the likely effect of the payment to the employer on the potential size of members' retrenchment benefits.
- 10.6 Where the retrenchment benefit is an actuarial reserve, or some comparable approach, the Member must advise the trustee in the certificate whether the payment to the employer will have any effect on the potential size of Fund members' retrenchment benefits.
- 10.7 In relation to clauses 10.5 and 10.6 of this Professional Standard, the Member's attention is drawn to the requirements of SIS Regulation 13.16 which prohibit an adverse alteration to the amount of, right to, or claim to, Accrued Benefits by any act carried out, or consented to, by the trustee.
- 10.8 Other contingencies the Member must consider are whether:
- (a) a higher benefit than the Vested Benefit may be payable, subject to the exercise of discretion; or
  - (b) the wind-up benefit may be in the form of an equitable share of the Assets, or some comparable approach.

In such cases, similar principles must be applied to these contingencies as to those applying to retrenchment benefits as described above.

## **11. EVENTS FOLLOWING THE EFFECTIVE DATE OF THE CALCULATIONS**

- 11.1 The Member must take into account known events occurring between the effective date of the calculations and the date of signing the certificate as described in section **5** of this Professional Standard.
- 11.2 The Member must also consider events which may occur in the future to the extent that it is necessary to do so to meet the requirements of clause 4.1(b) of this Professional Standard.
- 11.3 It is not necessary to consider any other potential future events for the purposes of certifying whether the Fund will be in a Satisfactory Financial Position immediately following any payment to the employer. In other words, the certificate is simply in the nature of a "snapshot".
- 11.4 However, the Member must alert the trustee in the certificate to possible future events which could result in the Fund ceasing to be in a Satisfactory

Financial Position. Some examples must be included to demonstrate the sensitivity of the Fund's financial position to the possible future events. Such events could include:

- (a) payment of employer contributions at less than the recommended rate;
- (b) investment returns which are lower than anticipated;
- (c) salary increases which are higher than anticipated;
- (d) large numbers of retrenchments;
- (e) certain exercises of employer discretions; and
- (f) expected increases in Vested Benefits and expected exercises of trustee discretions (for example, due to Fund members being eligible for early retirement).

This list is not intended to be all-inclusive. The objective is to ensure that the trustee is fully informed when making any decision to approve a payment to the employer. The Member must ensure the trustee is aware of what would occur if the Fund were terminated when the Fund was not in a Satisfactory Financial Position.

- 11.5 Potential adverse future events need to be considered particularly carefully where the coverage of Vested Benefits is marginal.
- 11.6 The Member must place an expiry date on the certificate such that, if the proposed payment to the employer is made after that date, a new certificate is required.

## **12. FUTURE CONTRIBUTIONS**

- 12.1 The Member must include in the certificate a recommended employer contribution rate (or rates) following any payment to the employer.
- 12.2 The recommended contributions must be determined using the principles described in PS 400. The contributions must also take account of any funding and solvency requirements under the SIS Regulations.
- 12.3 The trustee must be informed in the Member's certificate that continuation of a Satisfactory Financial Position is likely to be dependent on contributions being paid at the recommended rate, and on future experience being in accordance with the Member's assumptions.
- 12.4 The Member must consider whether a change in investment policy, insurance arrangements or any other policy is appropriate as a result of the repatriation and, if a change is considered appropriate, it must be disclosed in the certificate.

- 12.5 The Member must consider and document Material risks that have been identified that are associated with the actuarial assumptions used in the investigation and any Material risks that directly relate to the ongoing actuarial management of the defined benefit section of the Fund.

### **13. CONTENT OF THE ACTUARY'S CERTIFICATE**

The following information must be provided in the Member's certificate where relevant. The information below may also be varied in accordance with sections 14 or 15 of this Professional Standard, where relevant.

#### *Satisfactory Financial Position*

- (a) Certification that, following the proposed payment of the specified amount to the employer and any associated benefit improvements, the Fund will remain in a Satisfactory Financial Position.
- (b) The possible need for the trustee to vary the amount paid to the employer to allow for events occurring between the effective date of the calculations and the date of the payment in accordance with clause 5.3 of this Professional Standard.

#### *Coverage of Actuarial Value of Accrued Benefits*

- (c) The actuarially determined value of the Fund's Assets, before and after the payment.
- (d) The Actuarial Value of Accrued Benefits (before and after any benefit improvements, which must be specified).
- (e) The ratio of (c) to (d), before and after the payment (and any benefit improvements).
- (f) A description of the method used to apportion benefits between past and future Membership and any statements required by PS 402 or PS 404 in respect of the method used to calculate the Actuarial Value of Accrued Benefits and the actuarially determined value of the Fund's Assets respectively.
- (g) The key assumptions used in the valuation.
- (h) A description of the method of calculating the actuarially determined value of the Fund's Assets, where this is other than the Net Market Value.

#### *Coverage of Vested Benefits*

- (i) The Net Market Value of the Fund's Assets, before and after the payment.
- (j) The Vested Benefits (before and after any benefit improvements).

- (k) The ratio of (i) to (j), before and after the payment (and any benefit improvements).
- (l) Any assumptions used in determining the Vested Benefits.
- (m) The effect on the Vested Benefits of valuing pension benefits on an equivalent market basis in accordance with clause 8.2 of this Professional Standard.

#### *Coverage of Retrenchment Benefits etc*

Note: The items in (n) to (q) below assume that the retrenchment benefit is clearly defined. Where the retrenchment benefit is in the nature of an "equitable share" or an "actuarial reserve" which is not clearly defined, these items must be replaced by information which meets the requirements of section 10 of this Professional Standard.

- (n) The value of retrenchment benefits (before and after any benefit improvements) if appropriate.
- (o) The ratio of (i) to (n), before and after the payment (and any benefit improvements).
- (p) Any assumptions used in determining the value of total retrenchment benefits.
- (q) If the ratio in (o) is less than 1 after the payment, an explanation of why the Member considers the potential impact of future retrenchments does not jeopardise the Fund's financial position.
- (r) Similar information to that in (n) to (q) above, in relation to any contingent benefits other than retrenchment benefits.

#### *Future funding*

- (s) Recommended future contributions after the payment.
- (t) A statement equivalent to that required under SIS Regulation 9.31(1)(d).
- (u) If there is a funding and solvency certificate in force in relation to the Fund, confirmation that either:
  - (i) the existing funding and solvency certificate will remain valid after the payment (and any associated benefit improvements); or
  - (ii) a new funding and solvency certificate will be able to be prepared, with contribution rates no higher than those given in (s) above.
- (v) The potential impact of future events on the Fund's financial position in accordance with sections 10, 11 and 12 of this Professional Standard.

Disclosures required by clauses 10.4, 10.5, 10.6, 11.4, 12.3 and 14.3 of this Professional Standard must be included.

- (w) A statement to the effect that, while the Member is certifying that the Fund would be in a Satisfactory Financial Position, the Member gives no undertaking or guarantee in relation to the Fund's future financial position, which will depend on future events which cannot be predicted in advance.

*Other*

- (x) Statements to meet the requirements of clauses 8.2, 12.4 and 15.2, if relevant.

*Certification*

- (y) A statement that the actuarial certificate complies with this Professional Standard.
- (z) The name of the Member.
- (aa) The name of the Fund.
- (bb) The name/s of the employer/s to which the proposed payment/s is/are being made.
- (cc) The type of Assets which were assumed to be sold, if relevant.
- (dd) The effective date of the calculations.
- (ee) The date of signing the certificate.
- (ff) The expiry date of the certificate.

## **14. PAYMENT BY INSTALMENTS**

14.1 Section 117 of the SIS Act places no time limit on the period from the date of the Member's certificate to the date the amount is paid to the employer. This provides the flexibility for the proposed payment to be by way of a series of instalments, for example eight quarterly amounts. In this case, it is not necessary to produce separate actuarial certificates, each of which complies with this Professional Standard, every time an instalment is due.

14.2 It would be necessary to provide a certificate at the outset which meets the requirements in this Professional Standard, but treating the present value of the instalments as if it were a lump sum payment to the employer. However, before providing this certificate, the Member must ensure that, based on the assumptions used, the Fund is still expected to be in a Satisfactory Financial Position after each future instalment is paid, and convey this to the trustee.

14.3 The Member must advise the trustee in the certificate to check with the Member at least annually that the Fund is expected to remain in a Satisfactory Financial Position after the planned future payments. The Member must provide a new certificate each year (or more frequently if the Member considers it necessary) that he or she is satisfied that the Fund is still in a Satisfactory Financial Position.

## **15. USE OF A FORMULA APPROACH**

15.1 In some cases, the Member may wish to use a formula rather than a dollar amount as the proposed payment to the employer. For example, the Member may wish to certify that the Fund would remain in a Satisfactory Financial Position after payment of an amount to the employer equal to the value of the Assets less a percentage of the Accrued Benefits at the date of repayment.

15.2 Where a formula is used, either:

- (a) a dollar amount obtained by applying the formula must be calculated as at an effective date which is not more than six months prior to the date of certification; or
- (b) an upper limit, expressed in dollars, must be placed on the amount actually repaid. This upper limit must be specified in the certificate and must be such that, had the Member applied the formula as at the effective date, the dollar amount determined would have been the same as, or higher than, the specified upper limit.

15.3 Hence the certificate must include:

- (a) an effective date not more than six months prior to the date of certification (whether or not any actual calculations have been carried out);
- (b) a dollar amount of payment to the employer as at the effective date, or an upper limit on the actual payment; and
- (c) the relevant formula, which must clearly define all the elements used.

15.4 Where a formula approach is used, the Member must be certain that the principles in clause 4.1 of this Professional Standard have been applied, whether or not any actual calculations are carried out. The Member may vary from the requirements of section 13 of this Professional Standard to the extent necessary to cater for the formula approach used.

## **END OF PROFESSIONAL STANDARD 408**