

EXPLANATORY MEMORANDUM TO EXPOSURE DRAFT OF UPDATED PROFESSIONAL STANDARD 403 - PREPARATION OF BENEFIT CERTIFICATES

August 2021

1. ABOUT THIS EXPLANATORY MEMORANDUM

This Explanatory Memorandum has been prepared by the Superannuation and Investments Practice Committee (SIPC) to assist Members in understanding proposed updates to Professional Standard 403 *Preparation of Benefit Certificates* (PS 403), which relates to the preparation of Benefit Certificates under the Superannuation Guarantee (Administration) Act 1992 (Cth) (the SG Act).

2. BACKGROUND

The SG Act was amended in October 2019 with the stated aim being 'to improve the integrity of the superannuation system by ensuring that an individual's salary sacrifice contributions cannot be used to reduce an employer's minimum superannuation guarantee (SG) contributions'. The amendments apply from 1 January 2020 to:

- ▶ prevent contributions made under salary sacrifice arrangements from satisfying an employer's SG obligations; and
- ▶ specifically include salary or wages sacrificed to superannuation in the earnings base for calculating an employer's SG obligations.

However, the amendments did not address SG obligations met via defined benefit (DB) funds i.e. they only changed the SG obligations met by contributions made to accumulation funds (or Retirement Savings Accounts).

The SIPC is not aware of any evidence that DB employer sponsors have been using salary sacrifice contributions to reduce their SG obligations. Nevertheless, the Institute considers that it is likely to be in the best interests of all parties that new Benefit Certificates do not allow employers covered by the certificate to use salary sacrifice superannuation contributions (Sacrificed Contributions) to reduce their SG obligations.

The reasons for this, along with further background and considerations, are set out in the SPC's [June 2020 Discussion Note: SG Benefit Certificates and salary sacrifice contributions](#) (Discussion Note).

3. OUTLINE OF CHANGES

The proposed updates to PS 403 are designed to be consistent with the interim approach encouraged in the Discussion Note.

Key changes in the Exposure Draft include introducing the concept of a 'Preferred Approach' under which a Benefit Certificate is prepared on a basis that does not allow any employer covered by the certificate to use Sacrificed Contributions to reduce their SG obligations.

Members' particular attention is drawn to revised clauses 5.2 to 5.8, which set out proposed new expectations and requirements relating to the Preferred Approach, including the contents of the certificate.

The Exposure Draft updates do not make it mandatory to use the Preferred Approach, given the SG legislation does not prohibit the use of Sacrificed Contributions to reduce employer SG obligations met via DB funds.

However the Institute strongly encourages that the Preferred Approach be used, as stated in clause 5.6 of the Exposure Draft. Accordingly clause 5.8 of the Exposure Draft imposes a number of conditions for the Preferred Approach not to be used, including:

- ▶ requiring the specific instructions of the Instructing Party (normally either the trustee or the employer sponsor) to the effect that the certificate be prepared on a basis that allows an employer covered by the certificate to use Sacrificed Contributions to reduce their SG obligations; and
- ▶ the inclusion in the certificate of prominent wording covering a number of matters relating to the approach used. Members may find the Discussion Note (paragraph 21, for example) helpful in identifying the main disadvantages of the certificate being prepared on this basis and why treating DB funds consistently with accumulation funds is the preferred practice of the Institute.

The Exposure Draft also includes the following changes:

- ▶ A definition of 'Instructing Party' has been added, being for the purposes of PS 403 the party which has engaged the Member to prepare a Benefit Certificate. It is noted that this is different from definition of 'Client' in the Code, which is 'the recipient of a Service provided by a Member'. As both the fund trustee and the sponsoring employer will receive copies of the certificate, the 'Instructing Party' definition is considered necessary to provide clarity where it is used in the proposed PS 403 updates.
- ▶ A definition of 'Employer Contributions' has been added, which excludes Sacrificed Contributions where the Preferred Approach is used:
 - Corresponding changes have been made to the definitions of Member Contributions, DB Member Contributions and Voluntary Member Contributions, so that these items will be required to include relevant Sacrificed Contributions where the Preferred Approach is used.
 - The definition of the rate of DB Member Contributions (MCR) in clause A1.4 has also been amended to specify that it is net of allowance for 15% contributions tax in respect of any relevant Sacrificed Contributions.

- ▶ A new “OTEM” earnings base definition has been inserted, which includes Sacrificed Contributions where the Preferred Approach is used.
- ▶ Allowance for a Preferred Approach Start Date has been made so that the treatment of Sacrificed Contributions as member contributions and inclusion in OTEM can be made prospective from that date.

Other noteworthy features of the Exposure Draft include:

- ▶ Some element of retrospectivity may be unavoidable where the Preferred Approach is used for a defined benefit-style MRB based on average OTEM – refer clauses A1.8 to A1.10.
- ▶ It is expected that the Preferred Approach would be used in cases where the NECR is specified by a formula based on employer contributions paid (see clauses 6.7 to 6.9) and for a Benefit Certificate that relates to a Deemed Defined Benefit Fund (clause A3.2).

4. APPLICATION

When finalised, the updated PS 403 will apply to Benefit Certificates signed after its Commencement Date. The Commencement Date will be after the date of issue.

In the meantime, the Institute expects Members preparing new Benefit Certificates to consider the Exposure Draft guidance and strongly encourages Members to use the Preferred Approach set out in the Exposure Draft. The SPC considers that Benefit Certificates prepared in accordance with the Exposure Draft will also meet the requirements of the current PS 403.

As noted above, the SPC is not aware of any evidence that DB employer sponsors have been using salary sacrifice contributions to reduce their SG obligations. It is therefore not expected that Members would seek to replace existing Benefit Certificates ahead of their expiry date in order to formally require use of the Preferred Approach, unless requested to do so by a client.

5. COMMENTS

The SIPC would welcome comments on the Exposure Draft from Members and other interested parties.

The SIPC expects that the use of approaches other than the Preferred Approach will be rare and particularly encourages feedback from any Member who thinks this may not be the case.

The SIPC would also welcome comment on the alternative of making the Preferred Approach mandatory.

Please send all comments with a relevant subject line to ppd@actuaries.asn.au by midnight 16 September 2021.



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The SIPC will also include these proposed PS 403 changes on the agenda for an upcoming Insight session.

END OF EXPLANATORY MEMORANDUM