
Explanatory Memorandum to updated Professional Standard 406 Unsegregated Superannuation Liabilities

September 2022

1. About this Explanatory Memorandum

This Explanatory Memorandum has been prepared by the Superannuation and Investments Practice Committee (SIPC) to assist Members in understanding updates to Professional Standard 406 *Unsegregated Superannuation Liabilities* (PS 406). PS 406 applies to Members providing an actuarial certificate under Section 295-390 of the Income Tax Assessment Act 1997 (ITAA 1997).

2. Outline of Changes

The key changes to the previous PS 406 (March 2021 version) are to:

- update clause 4.5 to reflect recent amendments to section 295-385(9) of ITAA 1997 which allow trustees to use their preferred method of calculating exempt current pension income (ECPI) where the fund is fully in the retirement phase for part of the income year but not for the entire income year (for the 2021-22 and later income years);
- add clause 7.2(xii) to require that, if the certificate has been prepared on the basis that the fund's assets are Disregarded Small Fund Assets for the year under Section 295-387 of ITAA 1997, **a statement to that effect is included in the certificate**;
- add clause 7.2(xiii) to require that, where the trustee has chosen under section 295-385(9) of ITAA 1997 to treat all of the assets of the fund as not being Segregated Current Pension Assets for the year, **a statement to that effect is included in the certificate**;
- update references to clauses in the Income Tax Assessment Regulations 1997 to those in its replacement Income Tax Assessment (Act 1997) Regulations 2021.

3. Pending legislative changes – Response to Douglas decision

PS 406 includes some information on the legislative requirements relevant to the certificates it relates to. However the legislative information provided is not exhaustive and, as stated in paragraph 1.4.4 of PS 406, if there is a conflict between the Professional Standard and any legislation, the legislation takes precedence. Members preparing certificates under PS 406 are expected to be familiar with the relevant legislative requirements and to stay abreast of legislative developments that may affect PS 406 certificates.

A current example of relevant legislative developments is:

- a 2020 Federal Court decision (see [Commissioner of Taxation v Douglas](#) and/or the linked [ATO Decision Impact Statement](#)) which found certain superannuation invalidity pensions were not superannuation income streams for tax purposes; and
- the Government's response to the decision.

In response to the Douglas decision, the former Government [announced](#) in November 2021 that it would amend tax legislation to “ensure these benefits are again treated as income streams rather than lump sums for tax purposes”. The current Government recently [consulted](#) on draft legislation to provide a ‘no worse off’ outcome to the affected pensioners of the two schemes that were the subject of the Douglas decision, and to confirm the original policy intent to tax all other similar defined benefit pensions as superannuation income streams.

Consistent with paragraph 1.3.5 of PS 406, Members dealing with funds that have pensions which are (or may be) affected by the Douglas decision and/or the legislative response may need to consider tax and/or legal advice as to the appropriate treatment for the preparation of a certificate under PS 406.

The updated (September 2022) version of PS 406 has been drafted with a view to it remaining applicable in the face of legislative developments such as those referred to above.

Therefore, while the SIPC will consider the final form of the legislative response to the Douglas decision if and when it is passed, it is not anticipated that the passage of the legislation will necessitate a further update to PS 406.

4. Consultation

Given the nature of the changes, there was no need for prior consultation with members via an Exposure Draft.

5. Commencement Date

The updated PS 406 takes effect for relevant actuarial certificates issued on or after 1 November 2022.

End of Explanatory Memorandum