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## Professional Standard 409

### Segregated Superannuation Asset Certificates

September 2022

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## **1. Introduction**

### **1.1. Application**

1.1.1 This Professional Standard applies to a Member providing an Actuary's Certificate for the purposes of sections 295-385 or 295-395 of the Income Tax Assessment Act 1997. This Standard is relevant to funds providing Retirement Phase Superannuation Income Stream Benefits. Retirement Phase Superannuation Income Stream Benefits may be account based or defined benefits.

1.1.2 This Professional Standard also applies to Members who support another Member in providing advice under the Professional Standard, as relevant to their contribution to the Services.

1.1.3 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) the Income Tax Assessment (1997 Act) Regulations 2021 (Cth);
- (c) the Superannuation Industry (Supervision) Act 1993 (Cth); and
- (d) the Superannuation Industry (Supervision) Regulations 1994 (Cth).

1.1.4 A Member who provides advice under this Professional Standard:

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

Members supporting the Member providing advice under this Professional Standard are not required to be an Eligible Actuary.

1.1.5 All work performed under this Professional Standard, whether by the Member providing advice or by a Member supporting the Member providing advice, is designated as an Applicable Service. As such, Members' attention is directed towards Practice Guideline 1 (General Actuarial Practice) which applies to Applicable Services. In the case of a Member supporting the Member providing advice, Practice Guideline 1 applies as relevant to their contribution to the Services.

1.1.6 This version of the Professional Standard incorporates changes relating to legislative updates.

## 1.2. Previous Versions

The first (March 2018) version of this Professional Standard replaced Guidance Note 452 *Segregated Assets Certificates by Actuaries under Section 273A and 273B of the Income Tax Assessment Act (ITAA 1936) (GN 452)*. It was updated as at 31 March 2020 and 31 March 2021 for additional conformance changes to align with the Institute's new Code.

## 1.3. About this Professional Standard

### 1.3.1 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.

1.3.2 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.

1.3.3 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.

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

1.3.5 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, 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.

## 1.4. Other relevant documents

- 1.4.1 This Professional Standard must be applied in the context of the relevant law, and relevant accounting and auditing standards.
- 1.4.2 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. Similarly, a reference to a Professional Standard includes any modification or replacement of that Professional Standard.
- 1.4.3 Apart from the Code or from legislation, 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.
- 1.4.4 If there is a conflict between this Professional Standard and any legislation, then the legislation takes precedence. 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.

## 2. Commencement Date

This Professional Standard applies to Actuary's Certificates in respect of financial years commencing on or after 1 July 2018 and that are issued on or after 1 November 2022.

## 3. Definitions

### 3.1. In this Professional Standard:

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

**'Actuary's Certificate'** means a certificate prepared by a Member for the purposes of section 295-385 or 295-395 of the Income Tax Assessment Act 1997, as applicable.

**'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.

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

**'Current Pension Liabilities'** means liabilities (contingent or not) in respect of RP Superannuation Income Stream Benefits of the superannuation fund.

**'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.

**'ITAR'** means the Income Tax Assessment (1997 Act) Regulations 2021 (Cth).

**'Non-current Pension Liabilities'** means superannuation benefit liabilities of the fund other than Current Pension Liabilities.

**'Prescribed Pension'** means a Superannuation Income Stream providing a Superannuation Income Stream Benefit of a type prescribed in section 295-385.01 of the ITAR.

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

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

**'RP Superannuation Income Stream' or 'RP Pension'** means a Retirement Phase Superannuation Income Stream as defined in section 307-80 of the Act.

**'RP Superannuation Income Stream Benefit'** is a Retirement Phase Superannuation Income Stream Benefit as defined in section 307-75 of the Act.

**'RSE'** means a 'registrable superannuation entity' as defined in section 10(1) of the SIS 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 an RSE).

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

**'Superannuation Income Stream'** is as defined in ITAR section 307-70.02.

**'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 capitalised terms used in this Professional Standard have the same meaning as set out in the Code.

#### **4. Legislative Requirements**

- 4.1.** Section 295-385 of the Act relates to Segregated Current Pension Assets. The Act requires that, for assets of the Plan to be recognised as segregated for the purposes of Section 295-385, inter alia the Trustee must, in certain circumstances, obtain an actuary's certificate "to the effect that the assets and the earnings that the actuary expects will be made from them would provide the amount required to discharge in full those liabilities, or that part of those liabilities, as they fall due".
- 4.2.** Section 295-395 of the Act relates to Segregated Non-current Assets. The Act requires that, for assets of the Plan to be recognised as segregated for the purposes of Section 295-395, inter alia the Trustee must obtain an actuary's certificate "to the effect that the amount of the assets, together with any future contributions, and the earnings that the actuary expects will be made from them will provide the amount

required to discharge in full those liabilities, or that part of those liabilities, as they fall due".

- 4.3.** 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:
- (a) Superannuation Income Stream is defined in ITAR section 307-70.02 by reference to provisions relating to pensions and annuities in the SIS Act and Regulations.
  - (b) Note that under the definition in ITAR section 307-70.02, a pension which does not meet the requirements of a pension under the SIS Regulations may still be a Superannuation Income Stream in the specified circumstances.
  - (c) Also see section 5.5 regarding the treatment of 'transition to retirement' income streams.
  - (d) To be included in Segregated Current Pension Assets, a pension must meet the ITAR section 307-70.02 definition of Superannuation Income Stream and be in Retirement Phase.
  - (e) As set out in paragraph 1.3.5, 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 whether or not a particular type of pension meets the regulatory requirements for inclusion in the value of Current Pension Liabilities.
- 4.4.** When preparing a certificate in respect of Segregated Current Pension Assets, the Member must document whether the RP Superannuation Income Streams included in the value of Current Pension Liabilities 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.
- 4.5.** Sections 295-385(4) and (5) of the Act provide an exemption from the requirement for an Actuary's Certificate in respect of Segregated Current Pension Assets where a fund's only RP Superannuation Income Stream Benefits in the relevant year are Prescribed Pensions. The ITAR prescribe allocated pensions, market-linked pensions and account-based pensions, as defined in the SIS Regulations, for the purposes of these sections. Funds with only these types of RP Superannuation Income Streams do not need an Actuary's Certificate in order for assets segregated to support only these liabilities to be classed as Segregated Current Pension Assets. Note Section 295-385(6) requires that Segregated Current Pension Assets in respect of the Prescribed Pensions cannot exceed the account balances.
- 4.6.** 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 were in respect of RP Superannuation Income Stream Benefits that are Prescribed Pensions, sections 295-385(3) & (4) mean that the assets supporting those income streams were deemed

to be Segregated Current Pension Assets at that time, even if this applied for only part of an income year. However, Members should note that for financial years starting on or after 1 July 2021, the Act has been amended to permit a trustee to choose, under section 295-385(9) of the Act, to treat all of the assets of the fund as not being Segregated Current Pension Assets for the year. This choice is only available in an income year where all the superannuation interests in the fund were in retirement phase at the same time for part, but not all, of the year and the fund's assets were not Disregarded Small Fund Assets. Where the trustee makes a valid choice under section 295-385(9) (and there are no Segregated Non-Current Assets), the outcomes set out in the ATO's letter will not apply i.e. the unsegregated method in section 295-390 of the Act can be used with all fund assets treated as unsegregated assets for the whole of the year.

- 4.7.** A fund with Disregarded Small Fund Assets cannot have Segregated Current Pension assets or Segregated Non-current Assets.
- 4.8.** If Actuary's Certificates are required under both Sections 295-385 and 295-395 (that is, the plan has both Segregated Current Pension Assets and Segregated Non-current Assets), or either or both of these sections and Section 295-390 (unsegregated assets exempt proportion), the certificates are to be provided concurrently and by the same Member. To provide a segregated assets certificate the Member must be satisfied that the assets have been segregated and that only payments relating to the relevant liabilities are met from the segregated assets during the currency of the certificate.

## **5. Calculation of Liabilities**

### **5.1 General**

- 5.1.1. This Standard applies to superannuation funds providing account-based type benefits as well as Defined Benefit Pensions.
- 5.1.2. In the determination of assumptions to be used in valuing the relevant fund liabilities, the Member must have regard to the particular experience and circumstances of the fund.
- 5.1.3. For a Defined Benefit Superannuation Fund the value/s of Current Pension Liabilities and/or Non-current Pension Liabilities (as required) must be determined as prescribed in PS 400 on a "best estimate" basis. 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 (such as a change in investment strategy or market outlook).
- 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.

- 5.1.5. The valuation date must be a date within the year of income to which the certificate relates.

## **5.2 Account Based Benefits**

- 5.2.1 The liability in respect of a RP Superannuation Income Stream or other superannuation interest 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 account.
- 5.2.2 Note that Section 295-385(6) requires that Segregated Current Pension Assets in respect of Prescribed Pensions (refer paragraph 4.5) cannot exceed the account balances.

## **5.3 Defined Benefits**

- 5.3.1 For the avoidance of doubt, the values of Defined Benefit Pension liabilities and/or superannuation liabilities (as required) must include allowance for the best estimate administrative and operational expenses associated with those liabilities.
- 5.3.2 Where relevant, the value/s of any defined benefit 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 the relevant benefit liabilities consistent with the requirements of section 295-390(4) of the Act.
- 5.3.3 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, rather than requiring a full valuation of all the Non-current Pension Liabilities, in many cases the value of Non-current Pension Liabilities (where required) may be calculated as:

Net Assets

Less the value of Current Pension Liabilities

Less any reserve amounts that are not be expected to be used to provide superannuation benefits for existing members

Less any amount of surplus which is expected to be refunded to an employer sponsor rather than being used to pay benefits to existing

members.

- 5.3.4 Paragraph 5.3.3 does not apply where the assets of a Defined Benefit Superannuation 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 5.3.3 cannot be applied; rather a valuation of all the Non-current Pension Liabilities must be performed.

#### **5.4 Treatment of contingent benefits**

- 5.4.1 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 Member 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.
- 5.4.2 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 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.

#### **5.5 Treatment of transition to retirement income streams and pensions**

- 5.5.1 As specified in the definition of retirement phase, an RP Superannuation Income Stream does not include all Superannuation Income Streams. In particular, it does not include certain types of 'transition to retirement income streams' (TRISs), as set out in section 307- 80(3) of the Act, such as a TRIS where both (i) the recipient is not a reversionary beneficiary and (ii) a specified condition of release has not been satisfied or the fund has not been notified that a specified condition of release has been satisfied.
- 5.5.2 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 an RP Superannuation Income Stream.

## 6. Actuary's Certificate

6.1. In the case of Segregated Current Pension Assets the amount segregated may be less than, but cannot normally exceed the value of Current Pension Liabilities:

- (a) For a fund that is not a Defined Benefit Superannuation Fund the segregated assets must always be equal to or lower than the relevant liabilities. As set out in paragraph 4.5, Segregated Current Pension Assets in respect of Prescribed Pensions cannot exceed the account balances.
- (b) For a Defined Benefit Superannuation Fund with Defined Benefit Pension liabilities, the value of the Current Pension Liabilities will normally not move in unison with the amount of Segregated Current Pension Assets, so that surpluses or deficits may arise depending on experience. For such a fund it is acceptable for the amount of the Segregated Current Pension Assets to exceed the value of the Current Pension Liabilities on occasions provided that the Member is satisfied that the trustee has suitable rebalancing processes in place.
- (c) For the purpose of paragraph 6.1(b), suitable rebalancing processes will depend upon factors such as the relationship of segregated assets to segregated liabilities, the size and volatility of the segregated assets, whether there are new pensioners from time to time, whether commutations are permitted and the valuation assumptions adopted. Suitable balancing processes will identify and remove, at least annually, any excess of segregated assets that may arise due to favourable experience.
- (d) A Member must not provide an Actuary's Certificate required under section 295- 385 of the Act for a fund referred to in paragraph 6.1(b) if the Member is not satisfied that the trustee has suitable rebalancing processes in place.

6.2. Whilst it is not necessary for an Actuary's Certificate required under sections 295-385 or 295-395 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 lodgment of the fund's income tax return for that income year.

6.3. The Actuary's Certificate must provide the following information:

- (a) **Section 295-385 Certificates:**
  - 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 (in the year of income) to which the values of the Segregated Current Pension Assets and current RP Superannuation Income Stream liabilities of the fund relates;
- v. the value of Segregated Current Pension Assets held by the fund at that date;
- vi. the value of the Current Pension Liabilities (current RP Superannuation Income Stream Liabilities) of the fund at that date, in respect of which Segregated Current Pension Assets are held;
- vii. the expected rate of the fund's earnings on the Segregated Current Pension Assets (where applicable);
- viii. a description of the pension benefits which have been valued to determine the value of Current Pension Liabilities;
- ix. whether the Member 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);
- x. a summary of the data on which the certificate is based. This must include details of the documents relied upon by the Member in determining that the particular assets in question have been segregated (for example the fund's investment policy) or whether a statement or assessment by another party has been relied upon and (in this situation) who is the relevant party (e.g. the trustee or auditor);
- 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. a statement that the Member is satisfied that the Segregated Current Pension Assets and the earnings that the Member expects will be made from them would provide the amount required to discharge in full the Current Pension Liabilities, or that part of those liabilities, as they fall due;
- xiv. where relevant to the calculation of Current Pension Liabilities, the estimated rate or amount of any recommended future contributions at that date;
- xv. confirmation that values of liabilities set out in the certificate have been determined in accordance with this Professional Standard;
- xvi. the name, address and qualifications of the Member giving the certificate;
- xvii. the date of the certification; and
- xviii. the Member's signature.

(b) **Section 295-395 Certificates:**

- 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 (in the year of income) to which the values of the Segregated Non-current Assets and Non-current Pension Liabilities of the fund relates (i.e. liabilities other than current RP Superannuation Income Stream liabilities);
- v. the value of Segregated Non-current Assets held by the fund at that date;
- vi. the value of the Non-current Pension Liabilities of the fund at that date, in respect of which Segregated Non-current Assets are held;
- vii. the expected rate of the fund's earnings on the Segregated Non-current Assets (where applicable);

- viii. a description of the Non-current Pension Liabilities which have been valued;
- ix. a summary of the data on which the certificate is based. This must include details of the documents relied upon by the Member in determining that the particular assets in question have been segregated (for example the fund's investment policy) or whether a statement or assessment by another party has been relied upon and (in this situation) who is the relevant party (e.g. the trustee or auditor);
- x. a statement of the assumptions used to value the Non-current Pension Liabilities, including:
  - the rate of any assumed increase in future benefits 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;

- xi. 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;
- xii. a statement that the Member is satisfied that the amount of the Segregated Non-current Assets, together with any future contributions, and the earnings that the Member expects will be made from them will provide the amount required to discharge in full those liabilities, or that part of those liabilities, as they fall due;
- xiii. the estimated rate or amount of any recommended future contributions at that date;
- xiv. confirmation that values of liabilities set out in the certificate have been determined in accordance with this Professional Standard;
- xv. the name, address and qualifications of the Member giving the certificate;
- xvi. the date of the certification; and

xvii. the Member's signature.

## **7. 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 409**