



Explanatory Statement

Superannuation Data and Payment Standards (Release Authorities, and SMSF Rollovers) Amendment 2021

General Outline of Instrument

1. The *Superannuation Data and Payment Standards (Release Authorities, and SMSF Rollovers) Amendment 2021* (the SMSF Standard) is made under subsection 34K(3) of the *Superannuation Industry (Supervision) Act 1993* (SISA).
2. The SMSF Standard amends clause 2, clause 4, clause 5, clause 6, clause 8 and clause 9 of the *Superannuation Data and Payment Standards 2012* (F2016C01040) (the Data and Payment Standard).
3. The SMSF Standard also repeals Schedule 1 of the Data and Payment Standard, which provides transitional requirements entities were required to meet during the historical transition-in periods.
4. The SMSF Standard is a legislative instrument for the purposes of the *Legislation Act 2003*.
5. The Note to subsection 34K(3) of SISA refers to subsection 33(3) of the *Acts Interpretation Act 1901*. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Date of effect

6. The SMSF Standard is taken to have commenced on the day after its registration on the Federal Register of Legislation.

Application

7. The SMSF Standard applies to trustees of regulated superannuation funds and approved deposit funds that are required to comply with the requirements of the Data and Payment Standard.

What does this Standard do?

8. The SMSF Standard requires trustees of SMSFs to comply with the Data and Payment Standard in relation to rollovers and transfers that are requested on or after 31 March 2021.
9. The SMSF Standard also requires trustees of SMSFs and APRA-regulated superannuation entities to comply with the Data and Payment Standard in relation to release authorities issued on or after 31 March 2021 by the Commissioner of Taxation under Division 131 of Schedule 1 to the *Taxation Administration Act 1953*.
10. The SMSF Standard does not apply to:

- (a) trustees of SMSFs in relation to payments or information required under *Superannuation (Unclaimed Money and Lost Members) Act 1999*.
- (b) an APRA-regulated superannuation entity in relation to a **closed product**.
- (c) a rollover or transfer from a regulated superannuation fund or approved deposit fund if, when the transaction occurs, the superannuation entity is non-complying.
- (d) trustees of SMSFs and APRA-regulated superannuation entities who have received a release authority issued on or after 31 March 2021 by the Commissioner of Taxation under Division 131 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) outside of the Data and Payment Standard, for example where the Commissioner has sent a paper release authority by mail.

11. The SMSF Standard repeals Schedule 1 – transitional arrangements of the Data and Payment Standard. These transitional arrangements apply to periods which have ended some years ago and are no longer relevant.

12. The SMSF Standard also removes from clause 8 and clause 9 of the Data and Payment Standard reference to Schedule 1 – transitional arrangements.

13. A definition of APRA-regulated superannuation entity is inserted into clause 9 of the Data and Payment Standard. An APRA-regulated superannuation entity is an approved deposit fund or regulated superannuation fund. This definition does not include SMSFs or Pooled Superannuation Trusts.

14. Compliance cost impact: Minor – There will be no additional regulatory impacts for both implementation and ongoing compliance costs from this Instrument. The legislative instrument puts into place decisions that have already been taken by Government.

Background

15. The Data and Payment Standard specifies the minimum requirements for dealing with payments and information relating to certain transactions within the superannuation system, including rollovers and transfers between APRA-regulated superannuation entities and certain payments by the Commissioner of Taxation.

16. In order to comply with the obligations in Part 3B of the SISA, trustees must deal with payments and information in the manner specified in the Data and Payment Standard.

17. Currently, rollovers and transfers of superannuation to and from SMSFs, and release authority requests issued by the Commissioner of Taxation under Division 131 of Schedule 1 to the TAA, are excluded from the Data and Payment Standard.

18. On 27 April 2018 the Government announced that the Data and Payment Standard would be extended to include rollovers and transfers of superannuation monies to and from SMSFs. This change will require APRA-regulated superannuation entities and SMSFs to send and receive rollover information and payments using the SuperStream framework. This amendment will apply to rollovers and transfers, to and from SMSFs, requested on and after 31 March 2021.

19. Further, as part of the 2019–20 Budget it was announced that electronic release authorities issued by the Commissioner of Taxation would also be brought into the SuperStream framework. This change will allow the Commissioner of Taxation to electronically issue release authorities contained in Division 131 of Schedule 1 to the TAA. This amendment will apply to release authorities issued by the Commissioner of Taxation on and after 31 March 2021.

Consultation

20. This instrument was developed in consultation with industry stakeholders.

21. The consultation feedback sought clarification about the exclusion of non-complying funds from the Standard and the ATO has provided clarification on these points.

Exemption from disallowance and sunseting regime

22. Section 42 of the LA provides for the disallowance of legislative instruments. However, paragraph 44(2)(b) of the LA provides that section 42 does not apply to legislative instruments prescribed by regulation. Section 9 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (EOMR) provides a list of instruments that are not subject to disallowance. Table item 3 section 9 of the EOMR lists instruments (other than regulations) relating to superannuation. As a result, this instrument is not a disallowable legislative instrument under section 42 of the LA.

23. Part 4 of the LA provides for the sunseting of legislative instruments. However, paragraph 54(2)(b) of the LA provides that Part 4 of the LA does not apply if the legislative instrument is prescribed by regulation. Section 11 of the EOMR provides a list of instruments that are not subject to sunseting. Item 6 of the table in section 11 of the EOMR lists instruments (other than regulations) relating to superannuation. As a result, Part 4 of the LA does not apply to this instrument.

Statement of compatibility with Human Rights

24. As section 42 of the LA does not apply to this instrument, a Statement of compatibility with Human Rights in respect of this instrument is not required under section 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Legislative references:

Acts Interpretation Act 1901

Human Rights (Parliamentary Scrutiny) Act 2011

Legislation Act 2003

Legislation (Exemptions and Other Matters) Regulations 2015

Superannuation (Unclaimed Money and Lost Members) Act 1999

Superannuation Industry (Supervision) Act 1993

Taxation Administration Act 1953