

# EXPOSURE DRAFT



EXPOSURE DRAFT (03/04/2023)

## **Superannuation Industry (Supervision) Amendment (Your Future, Your Super— Addressing Underperformance in Superannuation) Regulations 2023**

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2023

David Hurley  
Governor-General

By His Excellency's Command

Stephen Jones [**DRAFT ONLY—NOT FOR SIGNATURE**]

Assistant Treasurer

Minister for Financial Services

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## 1 Name

This instrument is the *Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2023*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Superannuation Industry (Supervision) Act 1993*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1 Amendments

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## Schedule 1—Amendments

### *Superannuation Industry (Supervision) Regulations 1994*

#### 1 Regulation 9AB.1

Insert:

*adjusted index* has the meaning given by subregulation 9AB.5A(7).

#### 2 Regulation 9AB.1 (definition of *asset allocation standard*)

Repeal the definition, substitute:

*asset allocation standard* means:

- (a) the *Financial Sector (Collection of Data) (reporting standard) determination No. 16 of 2021*; or
- (b) an analogous legislative instrument (whether or not the legislative instrument is in force).

#### 3 Regulation 9AB.1

Insert:

*assumed index* has the meaning given by regulation 9AB.17.

*currency exposure*:

- (a) of a standard Part 6A product in relation to a quarter, means the Part 6A product's currency exposure in relation to the quarter, as reported to APRA in accordance with the applicable asset allocation standard; and
- (b) of a lifecycle Part 6A product in relation to a lifestage and a quarter, means the Part 6A product's currency exposure in relation to the lifestage and the quarter, as reported to APRA in accordance with the applicable asset allocation standard.

#### 4 Regulation 9AB.1 (definition of *fees standard*)

Repeal the definition, substitute:

*fees standard* means:

- (a) the *Financial Sector (Collection of Data) (reporting standard) determination No. 22 of 2021*; or
- (b) an analogous legislative instrument (whether or not the legislative instrument is in force).

#### 5 Regulation 9AB.1

Insert:

*gross investment return net of fees*:

- (a) of a standard Part 6A product in relation to a quarter, means the Part 6A product's gross investment return net of fees in relation to the quarter, as reported to APRA in accordance with the applicable investment performance standard; and

- 
- (b) of a lifecycle Part 6A product in relation to a lifestage and a quarter, means the Part 6A product's gross investment return net of fees in relation to the lifestage and the quarter, as reported to APRA in accordance with the applicable investment performance standard.

*IEH percentage*, *IEU percentage* and *IFI percentage* have the meanings given by subregulation 9AB.5A(6).

*index* has the meaning given by regulation 9AB.5A.

*investment pathway*: if there is a choice of different ways of investing in a Part 6A product, as reported to APRA in accordance with the applicable RSE structure standard, each of those ways is an *investment pathway* of the Part 6A product.

*investment pathway weight* has the meaning given by regulation 9AB.4A.

## 6 Regulation 9AB.1 (definition of *investment performance standard*)

Repeal the definition, substitute:

*investment performance standard* means:

- (a) the *Financial Sector (Collection of Data) (reporting standard) determination No. 20 of 2021*; or
- (b) the *Financial Sector (Collection of Data) (reporting standard) determination No. 21 of 2021*; or
- (c) an analogous legislative instrument (whether or not the legislative instrument is in force).

## 7 Regulation 9AB.1 (definition of *representative administration fees and expenses or RAFE*)

Repeal the definition, substitute:

*representative administration fees and expenses* or *RAFE* has the meaning given by regulation 9AB.4A.

## 8 Regulation 9AB.1

Insert:

*RSE structure standard* means:

- (a) the *Financial Sector (Collection of Data) (reporting standard) determination No. 17 of 2021*; or
- (b) the *Financial Sector (Collection of Data) (reporting standard) determination No. 18 of 2021*; or
- (c) an analogous legislative instrument (whether or not the legislative instrument is in force).

*trustee-directed product* has the meaning given by regulation 9AB.2.

## 9 Subregulation 9AB.2(1)

Repeal the subregulation, substitute:

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- (1) For the purposes of paragraph 60B(b) of the Act, trustee-directed products are identified as a class of beneficial interest in a regulated superannuation fund.

### 10 Paragraph 9AB.2(2)(a)

Repeal the paragraph, substitute:

- (a) as least one of the beneficial interests in the class is *not* a superannuation interest (within the meaning of the 1997 Tax Act) that supports a superannuation income stream that is in the retirement phase; and

### 11 Subregulation 9AB.2(3)

Omit “Part 6A product”, substitute “standard Part 6A product”.

### 12 After subregulation 9AB.2(4)

Insert:

- (4A) Despite subregulation (4), for the purposes of subparagraph (2)(b)(i), treat the covered asset classes for a quarter listed in each of the following paragraphs as each being one covered asset class for the quarter:
- (a) the covered asset classes identified in items 2, 3, 4, 5, 6 and 7 of the table in regulation 9AB.17;
  - (b) the covered asset classes identified in items 16, 17 and 18 of that table;
  - (c) the covered asset classes identified in items 19, 20 and 21 of that table;
  - (d) the covered asset classes identified in items 24, 25 and 26 of that table.

### 13 After regulation 9AB.4

Insert:

#### **9AB.4A Meaning of *representative administration fees and expenses* or *RAFE***

- (1) ***Representative administration fees and expenses* or *RAFE***, for a Part 6A product in relation to a period, means the sum of the following:
- (a) the Part 6A product’s administration fees and costs, and related tax expenses and benefits in relation to the period, as reported to APRA in accordance with the applicable investment performance standard and applicable RSE structure standard;
  - (b) the Part 6A product’s advice fees and costs, and related tax expenses and benefits in relation to the period, as reported to APRA in accordance with the applicable investment performance standard and applicable RSE structure standard.
- (2) In working out an amount for the purposes of paragraph (1)(a) or (b), assume that the amount related to a beneficiary of the entity offering the Part 6A product with an account balance in respect of the Part 6A product of \$50,000 throughout the period.

#### *Lifecycle Part 6A products*

- (3) Subregulations (4) to (6) apply if the Part 6A product is a lifecycle Part 6A product.



- (4) Despite subregulation (1), work out the **representative administration fees and expenses** or **RAFE** for the Part 6A product in relation to a period as follows:
- (a) first, work out each RAFE for the Part 6A product in relation to the period, in accordance with subregulation (1), on the assumptions that:
    - (i) subregulation (1) applies separately in respect of each lifestage of the Part 6A product; and
    - (ii) in applying subregulation (1) to a lifestage, references in that subregulation to amounts reported to APRA were references to such amounts to the extent that they relate to that lifestage;
  - (b) next, identify the largest of the RAFEs worked out under paragraph (a).
- (5) Subregulation (6) applies if:
- (a) the lifecycle Part 6A product has particular lifestages at the start of a financial year; and
  - (b) at one or more times during the year, the product starts to have different lifestages.
- (6) Despite subregulations (1) and (4), work out the RAFE for the Part 6A product in relation to the year as follows:
- (a) first, divide the year into periods on the following basis:
    - (i) the first period starts at the start of the year;
    - (ii) a new period starts each time the product starts to have different lifestages;
    - (iii) the last period ends at the end of the year;
- Note: Each period, other than the last period, ends immediately before the first time after the start of that period at which there is a change of the lifestages.
- (b) next, work out the RAFE for the Part 6A product in relation to each period identified under paragraph (a), in accordance with subregulation (4);
  - (c) next, work out the sum of the RAFEs worked out under paragraph (b).

### *Trustee-directed products*

- (7) Subregulations (8) and (9) apply if the Part 6A product is a trustee-directed product.
- (8) Despite subregulations (1) to (6), work out the **representative administration fees and expenses** or **RAFE** for the Part 6A product in relation to a period as follows:
- (a) first, work out each RAFE for the Part 6A product in relation to each quarter in the period, in accordance with those subregulations, on the assumptions that:
    - (i) those subregulations apply separately in respect of the standard fees and costs arrangement (as reported to APRA for the quarter in accordance with the applicable RSE structure standard) of each investment pathway of the Part 6A product; and
    - (ii) in applying those subregulations to a standard fees and costs arrangement, references in those subregulations to amounts reported to APRA were references to such amounts to the extent that they relate to that standard fees and costs arrangement;

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- (b) next, multiply each RAFE identified under paragraph (a) in relation to a quarter and an investment pathway by the investment pathway weight for the investment pathway for the quarter (see subregulation (9));
  - (c) next, work out the sum of the results of paragraph (b).
- (9) The *investment pathway weight* of a Part 6A product for an investment pathway for a quarter is:
- (a) the market value at the end of the quarter of all investments supporting the Part 6A product that are referable to the investment pathway;
- divided by:
- (b) the market value at the end of the quarter of all investments supporting the Part 6A product that are referable to an investment pathway of the Part 6A product.

### 14 Subregulations 9AB.5(1) to (3)

Repeal the subregulations, substitute:

- (1) A Part 6A product's *strategic asset allocation* in relation to a quarter to a covered asset class for the quarter is:
  - (a) unless paragraph (b) or (c) applies—the Part 6A product's benchmark asset allocation in relation to the quarter to the covered asset class, as reported to APRA in accordance with the applicable asset allocation standard (expressed as a fraction); or
  - (b) unless paragraph (c) applies, if the Part 6A product does not have a benchmark asset allocation in relation to the quarter to the covered asset class—zero; or
  - (c) if the quarter is before the first quarter (the *initial quarter*) in relation to which the trustee of the superannuation entity that offered the Part 6A product reported to APRA, in accordance with the applicable investment performance standard, a net return of the Part 6A product—the product's benchmark asset allocation in relation to the initial quarter to the covered asset class (expressed as a fraction).
- (2) For the purposes of subregulation (1), if a benchmark asset allocation to a covered asset class does not identify an asset domicile type for the covered asset class:
  - (a) treat half of the amount of that benchmark asset allocation as identified with an Australian domicile type;
  - (b) treat half of the amount of that benchmark asset allocation as identified with an international domicile type; and
  - (c) where the benchmark asset allocation identifies a currency hedging ratio for the covered asset class (including a currency hedging ratio of zero)—treat all of the amount of that currency hedging ratio as identified with the international domicile type; and
  - (d) where the benchmark asset allocation does *not* identify a currency hedging ratio for the covered asset class:
    - (i) if the Part 6A product does *not* have a currency exposure in relation to the quarter—treat a currency hedging ratio of zero as identified with the international domicile type; or

- (ii) if the Part 6A product has a currency exposure in relation to the quarter (including a currency exposure of zero)—treat a currency hedging ratio of the amount worked out under subregulation (3A) as identified with the international domicile type.
- (3) For the purposes of subregulation (1), if a benchmark asset allocation to a covered class identifies the international domicile type with the covered asset class and does *not* identify a currency hedging ratio for the covered asset class:
  - (a) if the Part 6A product does *not* have a currency exposure in relation to the quarter—treat a currency hedging ratio of zero as identified with the international domicile type; or
  - (b) if the Part 6A product has a currency exposure in relation to the quarter (including a currency exposure of zero)—treat a currency hedging ratio of the amount worked out under subregulation (3A) as identified with the international domicile type.
- (3A) For the purposes of subparagraph (2)(d)(ii) and paragraph (3)(b), work out the currency hedging ratio as follows:
  - (a) first, work out the Part 6A product’s strategic asset allocation, in relation to the quarter, to each covered asset class identified with the international domicile type;
  - (b) next, work out the sum of the strategic asset allocations worked out under paragraph (a);
  - (c) next, divide the currency exposure mentioned in subparagraph (2)(d)(ii) and paragraph (3)(b) by the result of paragraph (b);
  - (d) next, subtract the result of paragraph (c) from one.If the result of paragraph (d) is less than zero, treat it as being zero.

## 15 After subregulation 9AB.5(4)

Insert:

*Lifecycle Part 6A products*

- (4A) Subregulation (4B) applies if the Part 6A product is a lifecycle Part 6A product.
- (4B) Despite subregulations (1) to (4), work out the ***strategic asset allocation*** of a lifecycle Part 6A product in relation to a lifestage and a quarter to a covered asset class for the quarter on the assumptions that:
  - (a) those subregulations apply separately in respect of each lifestage of the Part 6A product; and
  - (b) in applying those subregulations to a lifestage, references in those subregulations to amounts reported to APRA were references to such amounts to the extent that they relate to that lifestage.

## 16 Subregulation 9AB.5(5)

Omit “strategic asset allocation to a covered asset class in relation to a quarter”, substitute “strategic asset allocation in relation to a quarter to a covered asset class for the quarter”.

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## 17 Subregulation 9AB.5(10)

Omit “covered asset class in relation to the quarter”, substitute “covered asset class for the quarter”.

## 18 At the end of regulation 9AB.5

Add:

- (11) Subregulation (12) applies if it is not possible to work out a Part 6A product’s strategic asset allocation to a covered asset class in relation to a quarter because information reported to APRA in accordance with the applicable asset allocation standard in respect of that strategic asset allocation is disaggregated into 2 or more benchmark asset allocations in relation to the quarter (the *reported allocations*).
- (12) For the purposes of this regulation, treat the Part 6A product’s strategic asset allocation to the covered asset class in relation to the quarter as being:
- (a) unless paragraph (b) applies—the sum of the reported allocations; or
  - (b) if it would be unreasonable to apply paragraph (a)—a reasonable aggregation of the reported allocations.

## 19 After regulation 9AB.5

Insert:

### 9AB.5A Meaning of *index*

- (1) **Index**, of a covered asset class for a quarter, means the amount calculated using the following formula, rounded to 10 decimal places (rounding up if the eleventh decimal place is 5 or more):

$$\frac{\text{Value at the end of the quarter of the assumed index for the covered asset class}}{\text{Value at the end of the previous quarter of the assumed index for the covered asset class}} - 1$$

Note: For a covered asset class for a quarter that is identified in item 24, 25 or 26 of the table in regulation 9AB.17 (alternatives, defensive alternatives or growth alternatives asset class), see subregulations (4) to (7) of this regulation.

#### *Late reporting of unlisted infrastructure indices*

- (2) Subregulation (3) applies in relation to a covered asset class for a quarter if:
- (a) the covered asset class is identified in item 14 or 15 of the table in regulation 9AB.17; and
  - (b) the value at the end of a quarter of the assumed index for the covered asset class is not publicly available earlier than 36 days after the end of the financial year.
- (3) For the purposes of calculating the index of the covered asset class for the quarter:
- (a) treat the value at the end of the quarter of the assumed index for the covered asset class as being the value at the end of the quarter of the

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assumed index for the covered asset class identified in item 10 of the table in regulation 9AB.17; and

- (b) treat the value at the end of the previous quarter of the assumed index for the covered asset class as being the value at the end of the previous quarter of the assumed index for the covered asset class identified in item 10 of the table in regulation 9AB.17.

*Index for alternatives, defensive alternatives and growth alternatives*

- (4) Subregulations (5), (6) and (7) apply in relation to a covered asset class for a quarter if the covered asset class is identified in item 24, 25 or 26 of the table in regulation 9AB.17.
- (5) Despite subregulation (1), the index of the covered asset class for a quarter is the sum of the following:
- (a) the covered asset class's IEH percentage (see subregulation (6)) of the adjusted index (see subregulation (7)) of the covered asset class identified in item 2 (International Equity (hedged)) of the table in regulation 9AB.17 for the quarter;
  - (b) the covered asset class's IEU percentage (see subregulation (6)) of the adjusted index (see subregulation (7)) of the covered asset class identified in item 5 (International Equity (unhedged)) of that table for the quarter;
  - (c) the covered asset class's IFI percentage (see subregulation (6)) of the adjusted index (see subregulation (7)) of the covered asset class identified in item 19 (International Fixed Interest) of that table for the quarter.
- (6) The **IEH percentage**, **IEU percentage** and **IFI percentage** of the covered asset class mentioned in subregulation (4) is that identified in the item of the following table that has the covered asset class item number and covered asset class description that corresponds to the covered asset class:

<b>Component percentages for calculation of adjusted index for alternatives</b>				
<b>Covered asset class item</b>	<b>Covered asset class description</b>	<b>IEH percentage</b>	<b>IEU percentage</b>	<b>IFI percentage</b>
24	Alternatives	25%	25%	50%
25	Defensive alternatives	12.5%	12.5%	75%
26	Growth alternatives	37.5%	37.5%	25%

- (7) For the purposes of paragraphs (5)(a), (b) and (c), work out the **adjusted index** of a covered asset class for a quarter using the following formula, rounded to 10 decimal places (rounding up if the eleventh decimal place is 5 or more):

$$\left[ \frac{(1 + \text{Index})}{(1 + \text{Fee})^{\frac{1}{4}}} - 1 \right] \times [1 - \text{ART}]$$

where:

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*ART* means the assumed rate of tax for the quarter for the covered asset class.

*fee* means the assumed annual fee for the quarter for the covered asset class.

*index* means the index of the covered asset class for the quarter.

### 20 Subparagraph 9AB.6(1)(a)(ii)

Repeal the subparagraph, substitute:

- (ii) if the financial year is the 2020-21 financial year—the 1 July that is 6 years before 1 July in the financial year;
- (iii) if the financial year is the 2021-22 financial year—the 1 July that is 7 years before 1 July in the financial year;
- (iv) if the financial year is the 2022-23 financial year—the 1 July that is 8 years before 1 July in the financial year;
- (v) if the financial year is the 2023-24 financial year or a later financial year—the 1 July that is 9 years before 1 July in the financial year; and

### 21 Subregulation 9AB.6(1) (note)

Repeal the note, substitute:

Note: The lookback period will be 10 financial years, unless subparagraph (a)(i), (ii), (iii) or (iv) applies.

### 22 Subregulation 9AB.11(2)

Omit “rounded to 4 decimal places (rounding up if the fifth decimal place is 5 or more)”, substitute “rounded to 10 decimal places (rounding up if the eleventh decimal place is 5 or more)”.

### 23 Subregulation 9AB.11(2) (definition of *NIR*)

Repeal the definition, substitute:

*NIR*, in relation to a quarter, means:

- (a) where it is possible to identify the Part 6A product’s net investment return in relation to the quarter from information available to APRA—the Part 6A product’s net investment return in relation to the quarter; or
- (b) where it is *not* possible to identify the Part 6A product’s net investment return in relation to the quarter from information available to APRA, but it is possible to identify the Part 6A product’s gross investment return net of fees in relation to the quarter from information available to APRA—the amount worked out under subregulation (3) in relation to the quarter.

### 24 At the end of regulation 9AB.11

Add:

- (3) For the purposes of paragraph (b) of the definition of *NIR* in subregulation (2), work out the amount in relation to the quarter using the following formula:

$$\frac{\sum_{a=1}^A \left\{ SAA_{a,t-1} \times \left[ \text{Index}_{a,t} \times (1 - ART_{a,t}) \right] \right\}}{\sum_{a=1}^A \left\{ SAA_{a,t-1} \times \text{Index}_{a,t} \right\}} \times \text{GIRNF}_t$$

where:

**a** represents a covered asset class for the quarter, where the value of “a” corresponds to the number of the item of the table in regulation 9AB.17 relating to the quarter that identifies that covered asset class for the quarter.

Example: If a=2, then “a” represents the covered asset class identified in item 2 of the table in regulation 9AB.17 that relates to the quarter.

**A** means the number of covered asset classes identified in the table in regulation 9AB.17 that relates to the quarter.

**ART**, in relation to a covered asset class and a quarter, means the assumed rate of tax for the quarter for the covered asset class.

**GIRNF**, in relation to a quarter, means the Part 6A product’s gross investment return net of fees in relation to the quarter.

**index**, in relation to a covered asset class and a quarter, means the index of the covered asset class for the quarter.

**SAA**, in relation to a covered asset class and a quarter, means the Part 6A product’s strategic asset allocation in relation to the quarter to the covered asset class for the quarter.

**t** represents a quarter in a consecutive sequence of quarters, where if t=1, the quarter is the first quarter that starts in the lookback period.

- (4) Subregulation (5) applies if the Part 6A product is a trustee-directed product that has 2 or more net investment returns in relation to at least one quarter in the lookback period.
- (5) Despite subregulations (2) and (3), work out the **actual return**, for the Part 6A product for the lookback period for the product in respect of the financial year mentioned in subregulation (2) as follows:
  - (a) first, work out each actual return for the Part 6A product for the lookback period for the product in respect of the financial year, in accordance with those subregulations, on the assumptions that:
    - (i) those subregulations apply separately in respect of the standard fees and costs arrangement (as reported to APRA in accordance with the applicable RSE structure standard) of each investment pathway of the Part 6A product; and
    - (ii) in applying those subregulations to a standard fees and costs arrangement, references in those subregulations to amounts reported to APRA were references to such amounts to the extent that they relate to that standard fees and costs arrangement;

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- (b) next, identify the smallest of the actual returns worked out under paragraph (a).

### 25 Subregulation 9AB.12(2)

Omit “rounded to 4 decimal places (rounding up if the fifth decimal place is 5 or more)”, substitute “rounded to 10 decimal places (rounding up if the eleventh decimal place is 5 or more)”.

### 26 Subregulation 9AB.12(2) (definition of *NIR*)

Repeal the definition, substitute:

*NIR*, in relation to a quarter and a lifestage, means:

- (a) where it is possible to identify the Part 6A product’s net investment return in relation to the quarter and the lifestage from information available to APRA—the Part 6A product’s net investment return in relation to the quarter and the lifestage; or
- (b) where it is *not* possible to identify the Part 6A product’s net investment return in relation to the quarter and the lifestage from information available to APRA, but it is possible to identify the Part 6A product’s gross investment return net of fees in relation to the lifestage and the quarter from information available to APRA—the amount worked out under subregulation (2A) in relation to the lifestage and the quarter.

### 27 After subregulation 9AB.12(2)

Insert:

- (2A) For the purposes of paragraph (b) of the definition of *NIR* in subregulation (2), work out the amount in relation to the quarter and the lifestage using the following formula:

$$\frac{\sum_{a=1}^A \left\{ SAA_{a,j,t-1} \times \left[ \text{Index}_{a,t} \times (1 - ART_{a,t}) \right] \right\}}{\sum_{a=1}^A \left\{ SAA_{a,j,t-1} \times \text{Index}_{a,t} \right\}} \times \text{GIRNF}_{j,t}$$

where:

*a* represents a covered asset class for the quarter, where the value of “*a*” corresponds to the number of the item of the table in regulation 9AB.17 relating to the quarter that identifies that covered asset class for the quarter.

Example: If *a*=2, then “*a*” represents the covered asset class identified in item 2 of the table in regulation 9AB.17 that relates to the quarter.

*A* means the number of covered asset classes identified in the table in regulation 9AB.17 that relates to the quarter.

*ART*, in relation to a covered asset class and a quarter, means the assumed rate of tax for the quarter for the covered asset class.



**GIRNF**, in relation to a lifestage and a quarter, means the Part 6A product's gross investment return net of fees in relation to the lifestage and the quarter.

**index**, in relation to a covered asset class and a quarter, means the index of the covered asset class for the quarter.

**j** represents a lifestage of the Part 6A product, in a consecutive sequence of lifestages of the Part 6A product, where:

- (a) if  $j=1$ , the lifestage is the lifestage that applies to the youngest beneficiaries who hold the product; and
- (b) subject to paragraph (c), the sequence proceeds in ascending order of the ages of those beneficiaries; and
- (c) if there are 2 or more lifestages of the Part 6A product that apply to beneficiaries of the same age—the sequence proceeds in respect of those lifestages in the order specified by APRA in a determination under regulation 9AB.15.

**SAA**, in relation to a covered asset class, a lifestage and a quarter, means the Part 6A product's strategic asset allocation in relation to the lifestage and the quarter to the covered asset class for the quarter.

**t** represents a quarter in a consecutive sequence of quarters, where if  $t=1$ , the quarter is the first quarter that starts in the lookback period.

- (2B) Subregulation (2C) applies if the Part 6A product is a trustee-directed product that has 2 or more net investment returns in relation to at least one quarter in the lookback period.
- (2C) Despite subregulations (2) and (2A), work out the **actual return**, for the Part 6A product for the lookback period for the product in respect of the financial year mentioned in subregulation (2) as follows:
  - (a) first, work out each actual return for the Part 6A product for the lookback period for the product in respect of the financial year, in accordance with those subregulations, on the assumptions that:
    - (i) those subregulations apply separately in respect of the standard fees and costs arrangement (as reported to APRA in accordance with the applicable RSE structure standard) of each investment pathway of the Part 6A product; and
    - (ii) in applying those subregulations to a standard fees and costs arrangement, references in those subregulations to amounts reported to APRA were references to such amounts to the extent that they relate to that standard fees and costs arrangement;
  - (b) next, identify the smallest of the actual returns worked out under paragraph (a).

## 28 Paragraph 9AB.12(3)(b)

Repeal the paragraph, substitute:

- (b) either or both of the following apply:
  - (i) the Part 6A product and the quarters are in a class of Part 6A products and quarters specified in a determination under subregulation (4A);

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- (ii) the Part 6A product and the quarters are specified in a determination under subregulation (5).

### 29 Subregulation 9AB.12(4)

Repeal the subregulation, substitute:

- (4) Despite subregulation (2), the *actual return*, for the Part 6A product for the lookback period, is the amount calculated using the formula in subregulation (2), as modified in the way specified in the following determination:
  - (a) if only subparagraph (3)(b)(i) applies—the determination mentioned in that subparagraph;
  - (b) if only subparagraph (3)(b)(ii) applies—the determination mentioned in that subparagraph;
  - (c) if both subparagraphs (3)(b)(i) and (ii) apply—the determination mentioned in subparagraph (3)(b)(i).
- (4A) For the purposes of subparagraph (3)(b)(i), APRA may, by legislative instrument, make a determination that:
  - (a) specifies classes of Part 6A products and quarters; and
  - (b) specifies modifications of the formula in subregulation (2) that APRA considers are reasonably necessary to reflect the circumstances mentioned in paragraph (3)(a) in respect of the specified classes of Part 6A products and quarters.

### 30 Subregulation 9AB.12(5)

Omit “paragraph (3)(b)”, substitute “subparagraph (3)(b)(ii)”.

### 31 At the end of paragraph 9AB.12(5)(b)

Add “in respect of the specified Part 6A product and quarters”.

### 32 Subregulation 9AB.12(6)

Omit “the determination”, substitute “a determination under subregulation (5)”.

### 33 Subregulation 9AB.13(2)

Omit “rounded to 4 decimal places (rounding up if the fifth decimal place is 5 or more)”, substitute “rounded to 10 decimal places (rounding up if the eleventh decimal place is 5 or more)”.

### 34 Subregulation 9AB.13(2) (definition of *index*)

Repeal the definition, substitute:

*index*, in relation to a covered asset class and a quarter, means the index of the covered asset class for the quarter.

### 35 Subregulation 9AB.13(2) (definition of *SAA*)

Repeal the definition, substitute:

*SAA*, in relation to a covered asset class and a quarter, means the Part 6A product’s strategic asset allocation in relation to the quarter to the covered asset class for the quarter.

## 36 Subregulations 9AB.13(3) to (7)

Repeal the subregulations.

## 37 Subregulation 9AB.14(2)

Omit “rounded to 4 decimal places (rounding up if the fifth decimal place is 5 or more)”, substitute “rounded to 10 decimal places (rounding up if the eleventh decimal place is 5 or more)”.

## 38 Subregulation 9AB.14(2) (definition of *index*)

Repeal the definition, substitute:

*index*, in relation to a covered asset class and a quarter, means the index of the covered asset class for the quarter.

## 39 Subregulation 9AB.14(2) (definition of *SAA*)

Repeal the definition, substitute:

*SAA*, in relation to a covered asset class, a lifestage and a quarter, means the Part 6A product’s strategic asset allocation in relation to the lifestage and the quarter to the covered asset class for the quarter.

## 40 Subregulations 9AB.14(3) to (7)

Repeal the subregulations.

## 41 Paragraph 9AB.14(8)(b)

Repeal the paragraph, substitute:

- (b) either or both of the following apply:
  - (i) the Part 6A product and the quarters are in a class of Part 6A products and quarters specified in a determination under subregulation (9A);
  - (ii) the Part 6A product and the quarters are specified in a determination under subregulation (10).

## 42 Subregulation 9AB.14(9)

Repeal the subregulation, substitute:

- (9) Despite subregulation (2), the *benchmark return*, for the Part 6A product for the lookback period for the product in respect of the year, is the amount calculated using the formula in subregulation (2), as modified in the way specified in the following determination:
    - (a) if only subparagraph (8)(b)(i) applies—the determination mentioned in that subparagraph;
    - (a) if only subparagraph (8)(b)(ii) applies—the determination mentioned in that subparagraph;
    - (b) if both subparagraphs (8)(b)(i) and (ii) apply—the determination mentioned in subparagraph (8)(b)(i).
  - (9A) For the purposes of subparagraph (8)(b)(i), APRA may, by legislative instrument, make a determination that:
    - (a) specifies classes of Part 6A products and quarters; and
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## Schedule 1 Amendments

- (b) specifies modifications of the formula in subregulation (2) that APRA considers are reasonably necessary to reflect the circumstances mentioned in paragraph (8)(a) in respect of the specified classes of Part 6A products and quarters.

### 43 Subregulation 9AB.14(10)

Omit “paragraph (8)(b)”, substitute “subparagraph (8)(b)(ii)”.

### 44 At the end of paragraph 9AB.14(10)(b)

Add “in respect of the specified Part 6A product and quarters”.

### 45 Subregulation 9AB.14(11)

Omit “the determination”, substitute “a determination under subregulation (10)”.

### 46 Subregulations 9AB.16(7) and (8)

Repeal the subregulations.

### 47 Subregulation 9AB.17(3)

Omit “*Other/Commodities*”, substitute “*Alternatives*”.

### 48 Subregulation 9AB.17(7) (table)

Repeal the table, substitute:

**Covered asset classes, assumed indices, assumed annual fees and assumed tax rates for quarters starting on or after 1 July 2014**

Item	Description	Assumed index	Assumed annual fee	Assumed annual rate of tax
1	Australian Equity	ASA52 S&P/ASX 300 Total Return Index	0.05%	0.00%
2	International Equity (hedged; international economy type not specified or not applicable)	DE725341 MSCI All Country World Ex-Australia Equities Index with Special Tax (100% hedged to AUD)	0.11%	14.00%
3	International Equity (hedged; emerging markets)	DA725342 MSCI Emerging Markets with Special Tax (100% hedged to AUD)	0.11%	14.00%
4	International Equity (hedged; developed markets)	DA750700 MSCI World ex Australia with Special Tax (100% hedged to AUD)	0.11%	14.00%
5	International Equity (unhedged; international economy type not specified or not applicable)	DN714533 MSCI All Country World Ex-Australia Equities Index with Special Tax (unhedged in AUD)	0.09%	14.00%
6	International Equity	MSCI Emerging Markets with Special	0.09%	14.00%

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Amendments **Schedule 1**

**Covered asset classes, assumed indices, assumed annual fees and assumed tax rates for quarters starting on or after 1 July 2014**

Item	Description	Assumed index	Assumed annual fee	Assumed annual rate of tax
	(unhedged; emerging markets)	Tax (unhedged in AUD)		
7	International Equity (unhedged; developed markets)	MSCI World ex Australia with Special Tax (unhedged in AUD)	0.09%	14.00%
8	Australian Listed Property	ASA6PROP S&P/ASX 300 A-REIT Total Return Index	0.12%	14.00%
9	International Listed Property	RAHRSAH FTSE EPRA Nareit Developed ex Aus Rental 100% Hedged to AUD Net Tax (Super) Index	0.22%	14.00%
10	Australian Listed Infrastructure	FDCIISAH FTSE Developed Core Infrastructure 100% Hedged to AUD Net Tax (Super) Index	0.26%	14.00%
11	International Listed Infrastructure	FDCIISAH FTSE Developed Core Infrastructure 100% Hedged to AUD Net Tax (Super) Index	0.26%	14.00%
12	Australian Unlisted Property	MSCI/Mercer Australia Core Wholesale Monthly Property Fund Index – NAV-Weighted Post-Fee Total Return (All Funds)	0%	14.00%
13	International Unlisted Property	MSCI Global (Excl. Pan-Europe and Pan-Asia Funds) Quarterly Property Fund Index (Unfrozen) (Net Total Return; AUD fixed)	0%	14.00%
14	Australian Unlisted Infrastructure	MSCI Australia Quarterly Private Infrastructure Fund Index (Unfrozen) – 50th Percentile Post-Fee Total Return (All Funds)	0%	14.00%
15	International Unlisted Infrastructure	MSCI Australia Quarterly Private Infrastructure Fund Index (Unfrozen) – 50th Percentile Post-Fee Total Return (All Funds)	0%	14.00%
16	Australian Fixed Income	BAMST0 Bloomberg Ausbond Master 0+ Yr Index	0.10%	15.00%
17	Australian Fixed Income Excluding Credit	BAGV0 Bloomberg Ausbond Government 0+ Yr Index	0.10%	15.00%
18	Australian Credit	BACR0 Bloomberg AusBond Credit 0+ Yr	0.10%	15.00%

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## Schedule 1 Amendments

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**Covered asset classes, assumed indices, assumed annual fees and assumed tax rates for quarters starting on or after 1 July 2014**

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<b>Item</b>	<b>Description</b>	<b>Assumed index</b>	<b>Assumed annual fee</b>	<b>Assumed annual rate of tax</b>
		Index		
19	International Fixed Income	LEGATRAH Bloomberg Global Aggregate Index (hedged AUD)	0.10%	15.00%
20	International Fixed Income Excluding Credit	BTSYTRAH Bloomberg Global Treasury Index (hedged AUD)	0.10%	15.00%
21	International Credit	H00039AU Bloomberg Global High-Yield Index (hedged AUD)	0.10%	15.00%
22	Australian Cash	BAUBIL Bloomberg Ausbond Bank Bill Index	0.04%	15.00%
23	International Cash	BAUBIL Bloomberg Ausbond Bank Bill Index	0.04%	15.00%
24	Alternatives		0%	0%
25	Defensive Alternatives		0%	0%
26	Growth Alternatives		0%	0%

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**49 Regulation 9AB.23 (subparagraph (a)(i) of the definition of *test period*)**

Omit “8”, substitute “10”.

**50 Subregulation 14.28(1)**

Omit “(1) The amendments made by this Schedule”, substitute “The amendments made by Schedule 1 to the *Treasury Laws Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2021*”.

**51 Subregulation 14.28(2)**

Repeal the subregulation.

**52 In the appropriate position in Part 14**

Insert:

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## Division 14.32—Transitional arrangements arising out of the Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2023

### 14.34 Arrangements

The amendments made by Schedule 1 to the *Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2023* apply on and after 1 July 2023.

### 53 Schedule 2A

Repeal the Schedule, substitute:

## Schedule 2A—Information in notice under subsection 60E(2) of Act

Note: See subregulation 9AB.19(2).

Dear *[insert the name of the beneficiary of the superannuation entity]*,

*[If the conditions in subsection 60F(1) of the Act (2 consecutive fail assessments) are not satisfied, include the following paragraph]*

**Your superannuation product *[insert the name of the superannuation entity and the name of the Part 6A product]* has failed its annual performance test. You should think about moving your money to a different super product.**

*[If the conditions in subsection 60F(1) of the Act (2 consecutive fail assessments) are satisfied, include the following paragraph]*

**Your superannuation product *[insert the name of the superannuation entity and the name of the Part 6A product]* has failed its annual performance test at least 2 years in a row. We are now banned from accepting new members into this product until it passes a future test. You should consider moving your money to a different super product.**

The Australian Government tests your super fund every year to make sure your savings are well managed for when you retire. Funds that fail this test are required by law to tell you.

*[If the beneficiary holds only one product offered by the superannuation entity, include the following paragraph]*

You had \$*[insert the beneficiary's account balance for the Part 6A product as at 30 June in the calendar year in which the date of this letter falls]* invested with *[insert the name of the superannuation entity and the name of the Part 6A product]* on 30 June *[insert the calendar year in which the date of this letter falls]*. Last financial year you paid a total of \$*[insert total fees and costs charged to the beneficiary in the relevant financial year, excluding insurance premiums]* in fees to *[insert the name of the superannuation entity]*.

*[If the beneficiary holds more than one product offered by the superannuation entity, include the following paragraph]*

# EXPOSURE DRAFT

## Schedule 1 Amendments

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You had \$[insert the beneficiary's total account balance for all products offered by the superannuation entity as at 30 June in the calendar year in which the date of this letter falls] invested with [insert the name of the superannuation entity] on 30 June [insert the calendar year in which the date of this letter falls], of which \$[insert the beneficiary's account balance for the Part 6A product as at 30 June in the calendar year in which the date of this letter falls] was invested in [insert the name of the Part 6A product]. Last financial year you paid a total of \$[insert total fees and costs charged to the beneficiary in the relevant financial year, excluding insurance premiums] in fees to [insert the name of the superannuation entity].

**Your money will stay in [insert the name of the superannuation entity and the name of the Part 6A product] unless you move it.** Switching super products is easy and there are no fees.

You could save thousands of dollars more for when you retire by switching to a better product. By earning 1% more each year for 30 years, you could retire with 20% more in savings; for example, your super could increase from \$100,000 to \$120,000.

*[If the Part 6A product is a MySuper product, include the following paragraph]*

Finding a better super product is easy with the Australian Government's YourSuper comparison tool. You can use the tool to compare the fees and earnings of all simple, low-cost MySuper products. Go to [ato.gov.au/yoursuper](http://ato.gov.au/yoursuper) or use the QR code below:

*[If the Part 6A product is not a MySuper product, include the following paragraph]*

Finding a better super product could be worthwhile for your future. You may find it helpful to use the Australian Government's YourSuper comparison tool. You can use the tool to compare the fees and earnings of simple, low-cost MySuper products. Note that [insert the name of the superannuation entity and the name of the Part 6A product] is not a MySuper product. You should think about whether a MySuper product is right for you. Go to [ato.gov.au/yoursuper](http://ato.gov.au/yoursuper) or use the QR code below:

*[insert QR code for ato.gov.au/yoursuper]*

This letter does not take your personal situation into account. You should think about your investment plans and personal situation, including insurance, when switching.

When you have opened a new super product, contact the new fund or use myGov to move your money over.

### **Your questions answered**

#### **What is the annual performance test?**

The annual government test checks how much your super product has earned for you (after fees) over the last [insert the number of financial years in the lookback period for the Part 6A product in respect of the relevant financial year] financial years. It compares your product's earnings with those of a similar product over the same period.

Super funds that fail this test are required to tell you.

You can find out more about super at [moneysmart.gov.au](http://moneysmart.gov.au).

#### **How do I move to a new super product?**

The first step is to find a new super product. You should think about your investment plans and personal situation, including insurance, when switching.

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You may find it helpful to use the Australian Government’s YourSuper comparison tool. You can use the tool to compare the fees and earnings of simple, low-cost *MySuper products*.

Once you have chosen a new super product, contact the fund to open a new account.

After opening a new account, move your money from your existing one. You can contact the new fund or use myGov to do this. Find out more at *moneysmart.gov.au*

**What happens if a product fails two or more years in a row?**

If a super product fails the test at least two years in a row, it cannot accept new members until it passes a future test. You should think about the impact of this on the product’s ability to improve.

Your money will stay in the super product unless you move it.