

EXPOSURE DRAFT



EXPOSURE DRAFT

Treasury Laws Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2021

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 2021

David Hurley
Governor-General

By His Excellency's Command

Josh Frydenberg [**DRAFT ONLY—NOT FOR SIGNATURE**]
Treasurer

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules	1
	Schedule 1—Amendments	2
	<i>Superannuation Industry (Supervision) Regulations 1994</i>	2

EXPOSURE DRAFT

1 Name

This instrument is the *Treasury Laws Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2021*.

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Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

EXPOSURE DRAFT

Schedule 1—Amendments

Superannuation Industry (Supervision) Regulations 1994

5 After paragraph 2.38(2)(e)

Insert:

- (ea) if both of the following circumstances exist:
- (i) APRA has given the trustee or trustees of the entity a notification of a determination under subsection 60C(2) of the Act that the requirement in subsection 60D(1) of the Act has not been met for a Part 6A product offered by the entity, in relation to a financial year;
 - (ii) APRA had not given the trustee or trustees a notification of another determination under that subsection that that requirement had not been met for the Part 6A product, in relation to the previous financial year;
- a description of those circumstances.

10 After Part 9AA

Insert:

Part 9AB—Annual performance assessments etc.

Division 9AB.1—Preliminary

9AB.1 Interpretation

- (1) In this Part:

actual return has the meaning given by regulations 9AB.10 and 9AB.11.

administration fee cap, of a Part 6A product in relation to a financial year, means the Part 6A product's fee cap (for the administration fee type of fee) in relation to the end of the financial year, as reported to APRA in accordance with the fees standard in relation to the financial year.

administration fee flat amount, of a Part 6A product in relation to a financial year, means the Part 6A product's dollar amount (for the administration fee type of fee) in relation to the end of the financial year, as reported to APRA in accordance with the fees standard in relation to the financial year.

administration fee percentage, of a Part 6A product in relation to a financial year, means the Part 6A product's percentage of member balance (for the administration fee type of fee) in relation to the end of the financial year, as reported to APRA in accordance with the fees standard in relation to the financial year.

asset allocation standard, in relation to a quarter, means:

- (a) if the *Financial Sector (Collection of Data) (reporting standard) determination No. 13 of 2015* applies in respect of that quarter—that determination; or

- (b) if the determination in paragraph (a) is no longer in force but an analogous legislative instrument is in force that applies in respect of that quarter—that legislative instrument; or
- (c) if an analogous legislative instrument was in force before the determination in paragraph (a) was in force, and applied in respect of that quarter—that legislative instrument.

assumed annual fee has the meaning given by regulation 9AB.17.

assumed rate of tax has the meaning given by regulation 9AB.17.

benchmark RAFE, in relation to a quarter, has the meaning given by regulation 9AB.16.

benchmark return has the meaning given by regulations 9AB.13 and 9AB.15.

covered asset class has the meaning given by regulation 9AB.17.

fees standard, in relation to a financial year, means:

- (a) if the *Financial Sector (Collection of Data) (reporting standard) determination No. 41 of 2015* applies in respect of the last quarter of that financial year—that determination; or
- (b) if the determination in paragraph (a) is no longer in force but an analogous legislative instrument is in force that applies in respect of that quarter—that legislative instrument; or
- (c) if an analogous legislative instrument was in force before the determination in paragraph (a) was in force, and applied in respect of that quarter—that legislative instrument.

indirect cost ratio, of a Part 6A product in relation to a financial year, means the Part 6A product's indirect cost ratio in relation to the end of the financial year, as reported to APRA in accordance with the fees standard in relation to the quarter.

investment fee cap, of a Part 6A product in relation to a financial year, means the Part 6A product's fee cap (for the investment fee type of fee) in relation to the end of the financial year, as reported to APRA in accordance with the fees standard in relation to the financial year.

investment fee flat amount, of a Part 6A product in relation to a financial year, means the Part 6A product's dollar amount (for the investment fee type of fee) in relation to the end of the financial year, as reported to APRA in accordance with the fees standard in relation to the financial year.

investment fee percentage, of a Part 6A product in relation to a financial year, means the Part 6A product's percentage of member balance (for the investment fee type of fee) in relation to the end of the financial year, as reported to APRA in accordance with the fees standard in relation to the financial year.

investment performance standard, in relation to a quarter, means:

- (a) if the *Financial Sector (Collection of Data) (reporting standard) determination No. 40 of 2015* applies in respect of that quarter—that determination; or

EXPOSURE DRAFT

Schedule 1 Amendments

- (b) if the determination in paragraph (a) is no longer in force but an analogous legislative instrument is in force that applies in respect of that quarter—that legislative instrument; or
- (c) if an analogous legislative instrument was in force before the determination in paragraph (a) was in force, and applied in respect of that quarter—that legislative instrument.

lifecycle Part 6A product: a Part 6A product is a ***lifecycle Part 6A product*** if:

- (a) the investments supporting the Part 6A product are divided into categories; and
- (b) each such category of investments is referable to a lifestage of the Part 6A product.

lifestage weight has the meaning given by subsection (2).

lookback period has the meaning given by regulation 9AB.3.

net return, of a Part 6A product in relation to a quarter, means the Part 6A product's net return in relation to the quarter, as reported to APRA in accordance with the investment performance standard in relation to the quarter.

performance measure, for a Part 6A product for a financial year, has the meaning given by subregulation 9AB.8(3).

relevant administration fees and expenses (or ***RAFE***):

- (a) for a Part 6A product in relation to a quarter, means the sum of the following:
 - (i) the Part 6A product's representative member administration fees and costs in relation to the quarter, as reported to APRA in accordance with the investment performance standard in relation to the quarter;
 - (ii) the Part 6A product's representative member administration-related tax expense/benefit in relation to the quarter, as reported to APRA in accordance with the investment performance standard in relation to the quarter;
 - (iii) the Part 6A product's representative member advice fees and costs in relation to the quarter, as reported to APRA in accordance with the investment performance standard in relation to the quarter;
 - (iv) the Part 6A product's representative member advice-related tax expense/benefit in relation to the quarter, as reported to APRA in accordance with the investment performance standard in relation to the quarter; and
- (b) for a Part 6A product in relation to a quarter and a lifestage, means the sum of the following:
 - (i) the Part 6A product's representative member administration fees and costs in relation to the quarter and the lifestage, as reported to APRA in accordance with the investment performance standard in relation to the quarter;
 - (ii) the Part 6A product's representative member administration-related tax expense/benefit in relation to the quarter and the lifestage, as reported to APRA in accordance with the investment performance standard in relation to the quarter;

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- (iii) the Part 6A product's representative member advice fees and costs in relation to the quarter, as reported to APRA in accordance with the investment performance standard in relation to the quarter and the lifestage;
 - (iv) the Part 6A product's representative member advice-related tax expense/benefit in relation to the quarter, as reported to APRA in accordance with the investment performance standard in relation to the quarter and the lifestage.

strategic asset allocation, of a Part 6A product in relation to a quarter, means the Part 6A product's benchmark asset allocation in relation to the quarter, as reported to APRA in accordance with the asset allocation standard in relation to the quarter.

trustee-directed product has the meaning given by subregulation 9AB.2(2).

- (2) *Lifestage weight* of a Part 6A product, in relation to a quarter and a lifestage, means
 - (a) the market value at the end of the previous quarter of all investments supporting the Part 6A product that are referable to the lifestage;divided by:
 - (b) the market value at the end of the previous quarter of all investments supporting the Part 6A product that are referable to a lifestage of the Part 6A product
- (3) For the purposes of subregulation (2), if the previous quarter is before the first quarter (the *initial quarter*) in relation to which the trustee of the superannuation fund offered the Part 6A product reported to APRA, in accordance with the investment performance standard in relation to the initial quarter, a net return of the Part 6A product, treat the references in subregulation (2) to the previous quarter as being references to the initial quarter.

9AB.2 Meaning of Part 6A product—trustee-directed products

- (1) For the purposes of paragraph 60B(b) of the Act, subregulation (2) identifies a trustee-directed product as a class of beneficial interest in a regulated superannuation fund.
- (2) A class of beneficial interest in a regulated superannuation fund is a *trustee-directed product* in the fund if:
 - (a) there is no beneficial interest in the class that is a superannuation interest (within the meaning of the 1997 Tax Act) that supports a superannuation income stream that is in the retirement phase;
 - (b) the investment strategy, for the class of beneficial interest, of the trustee of the fund:
 - (i) requires the class of beneficial interest to have strategic asset allocations to more than one covered asset class; and
 - (ii) if there are only 2 such strategic asset allocations—requires each of those strategic asset allocations (expressed as a percentage) of the class of beneficial interest) to exceed 10%; and

EXPOSURE DRAFT

Schedule 1 Amendments

- (c) a beneficiary of the fund cannot require any trustee of the fund to alter an amount attributable to the beneficiary to be invested in a particular covered asset class; and
 - (d) none of the exceptions in subregulations (4), (5) and (6) applies.
- (3) For the purposes of paragraph (1)(b), in determining a strategic asset allocation for a covered asset class, assume that the class of beneficial interest is a Part 6A product.
- (4) The exception in this subregulation applies if all the members of the fund who hold the class of beneficial interest in the fund are defined benefit members.
- (5) The exception in this subregulation applies if the assets of the fund that are invested in respect of the class of beneficial interest are invested only in one or more of the following:
- (a) a life policy under which contributions and accumulated earnings may not be reduced by negative investment returns or any reduction in the value of assets in which the policy is invested;
 - (b) a life policy under which the benefit to a member (or a relative or dependant of a member) is based only on the realisation of a risk, not the performance of an investment;
 - (c) an investment account contract the only beneficiaries of which are a member, and relatives and dependants of a member.
- (6) The exception in this subregulation applies if:
- (a) the trustee of the fund does not engage in any activity in relation to the class of beneficial interest other than the following:
 - (i) offering the class of beneficial interest to members and prospective members of the fund;
 - (ii) engaging in activities necessary to make such offers; and
 - (b) the entity that manages investments in respect of the class of beneficial interest is not a connected entity in relation to the trustee of the fund.

9AB.3 Meaning of *lookback period*

- (1) The *lookback period* for a Part 6A product in respect of a financial year means the period that:
- (a) starts on the later of the following:
 - (i) the start of the first quarter in relation to which the trustee of the superannuation fund reported to APRA in accordance with the investment performance standard a net return of the product;
 - (ii) the 1 July that is 7 years before 1 July in the financial year; and
 - (b) ends on 30 June in the financial year.

Note: The lookback period will be 8 financial years, unless subparagraph (a)(i) applies.

- (2) For the purposes of subparagraph (1)(a)(i), in determining the first quarter mentioned in that subparagraph, disregard a quarter if:
- (a) there was not, for the entire duration of the quarter, at least one beneficiary holding the Part 6A product; or
 - (b) the superannuation fund was not, for the entire duration of the quarter, offering the Part 6A product as potentially generating returns.

9AB.4 Specified circumstances and provisions where multiple Part 6A products treated as one Part 6A product—subsection 60G(1) of Act

- (1) For the purposes of subsection 60G(1) of the Act, this regulation specifies:
 - (a) a kind of circumstances; and
 - (b) provisions of Part 6A of the Act in relation to that kind of circumstances.

Note: Subsection 60G(2) of the Act provides that in those kinds of circumstances, for the purposes of those provisions, 2 or more Part 6A products are treated as being one Part 6A product.

- (2) This subregulation specifies the kind of circumstances that exist where:
 - (a) a declaration by APRA under subregulation 9AB.5(1) is in force in relation to 2 or more Part 6A products; and
 - (b) APRA has given notice of the declaration in accordance with subregulation 9AB.5(2).
- (3) This subregulation specifies all the provisions of Part 6A of the Act (apart from section 60G) in relation to the kind of circumstances specified in subregulation (2).

9AB.5 APRA determination for paragraph 9AB.4(2)(a)

- (1) For the purposes of paragraph 9AB.4(2)(a), APRA may make a determination, in writing, in relation to 2 or more specified Part 6A products offered by one or more specified regulated superannuation funds, if APRA considers that making the determination is appropriate in the circumstances.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) APRA must give a notice of the determination, as soon as practicable after making it, to each of the trustees of the regulated superannuation funds specified in the determination. The notice must:
 - (a) be in writing; and
 - (b) include a copy of the determination.

Division 9AB.2—Performance assessments

9AB.6 Period for making and giving annual performance assessment—paragraph 60C(4)(b) of Act

For the purposes of paragraph 60C(4)(b) of the Act, the period mentioned in that paragraph is the period that:

- (a) starts immediately after the end of the financial year mentioned in that paragraph; and
- (b) ends on the following 31 August.

9AB.7 Specified classes of Part 6A product

- (1) For the purposes of subsection 60D(1) of the Act, the following subregulations specify classes of Part 6A product in relation to a financial year.

EXPOSURE DRAFT

Schedule 1 Amendments

Standard Part 6A products

- (2) A class of Part 6A product is specified in relation to a financial year if the Part 6A products in the class are *not* lifecycle Part 6A products.

Lifecycle Part 6A products

- (3) A class of Part 6A product is specified in relation to a financial year if the Part 6A products in the class are lifecycle Part 6A products.

9AB.8 Requirements for assessment

- (1) For the purposes of subsection 60D(1) of the Act, subregulation (2) specifies a requirement for all specified classes of Part 6A product in relation to a financial year.
- (2) The requirement is that either or both of the following conditions are met:
 - (a) the performance measure for the Part 6A product for the financial year equals or exceeds -0.005;
 - (b) if the number of whole financial years in the lookback period for the Part 6A product in respect of the financial year is less than 5—there is no determination in force under subregulation 9AB.9(1) that specifies the Part 6A product and the financial year.
- (3) The *performance measure* for a Part 6A product for a financial year is:
 - (a) the actual return for the Part 6A product for the lookback period for the Part 6A product in respect of the financial year;
minus:
 - (b) the benchmark return for the Part 6A product for that lookback period.

9AB.9 APRA determination for paragraph 9AB.8(2)(b)

- (1) For the purposes of paragraph 9AB.8(2)(b), APRA may make a determination, in writing, specifying:
 - (a) a Part 6A product offered by an entity; and
 - (b) one or more financial years.
- (2) In making the determination, APRA must consider whether any other Part 6A products that are offered by:
 - (a) the entity; or
 - (b) an associated entity (within the meaning of the *Corporations Act 2001*) of the entity;have failed to meet the requirement in subsection 60D(1) of the Act in relation to any financial year.

9AB.10 Meaning of *actual return*—standard Part 6A products

- (1) This regulation applies to Part 6A products that are in the class of Part 6A product specified in relation to a financial year under subregulation 9AB.7(2).

- (2) The **actual return** for a Part 6A product for a lookback period for the product is the amount calculated using the following formula, rounded to 4 decimal places (rounding up if the fifth decimal place is 5 or more):

$$\left[\prod_{t=1}^{4n} (1 + NR_t) \right]^{\frac{1}{n}} - 1$$

where:

n means the number of quarters in the lookback period, divided by 4.

NR, in relation to a quarter, means the Part 6A product's net return in relation to 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.

9AB.11 Meaning of **actual return**—lifecycle Part 6A products

- (1) This regulation applies to Part 6A products that are in the class of Part 6A product specified in relation to a financial year under subregulation 9AB.7(3).
- (2) The **actual return** for a Part 6A product for a lookback period for the product is the amount calculated using the following formula, rounded to 4 decimal places (rounding up if the fifth decimal place is 5 or more):

$$\left(\prod_{t=1}^{4n} \left\{ 1 + \sum_{j=1}^J [NR_{j,t} \times (\text{lifestage weight}_{j,t})] \right\} \right)^{\frac{1}{n}} - 1$$

where:

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.12.

J means the number of lifestages of the Part 6A product.

lifestage weight, in relation to a lifestage and a quarter, means the Part 6A product's lifestage weight in relation to the quarter and the lifestage.

n means the number of quarters in the lookback period, divided by 4.

NR, in relation to a quarter and a lifestage, means the Part 6A product's net return in relation to the quarter and the lifestage.

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.

EXPOSURE DRAFT

Schedule 1 Amendments

9AB.12 APRA determination—sequence of lifestages

For the purposes of paragraph (c) of the definition of *j* in subregulations 9AB.11(2), 9AB.15(2) and 9AB.16(7), APRA may make a determination, in writing, that specifies a sequence of lifestages of a specified Part 6A product that apply to beneficiaries of the same age.

9AB.13 Meaning of *benchmark return*—standard Part 6A products

- (1) This regulation applies to Part 6A products that are in the class of Part 6A product specified [in relation to a financial year] under subregulation 9AB.7(2).
- (2) The *benchmark return* for a Part 6A product for a lookback period for the product is the amount calculated using the following formula, rounded to 4 decimal places (rounding up if the fifth decimal place is 5 or more):

$$\left[\prod_{t=1}^{4n} \left(1 + \sum_{a=1}^A \left\{ SAA_{a,t-1} \times \left[\frac{(1 + \text{index}_{a,t})}{(1 + \text{fee}_{a,t})^{\frac{1}{4}}} - 1 \right] \times [1 - ART_{a,t}] \right\} - BRAFE_t \right) \right]^{\frac{1}{n}} - 1$$

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.

BRAFE, in relation to a quarter, means the benchmark RAFE for the Part 6A product in relation to the quarter.

fee, in relation to a covered asset class and a quarter, means the assumed annual fee for the quarter for the covered asset class.

index, in relation to a covered asset class and a quarter, means the amount calculated using the following formula, rounded to 4 decimal places (rounding up if the fifth decimal place is 5 or more):

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

Note: For the covered asset class for a quarter that is identified in item 16 of the table in regulation 9AB.17 (other/commodities asset class), see subregulations (8) and (9).

n means the number of quarters in the lookback period, divided by 4.

SAA, in relation to a covered asset class and a quarter, has the meaning given by subregulation (3).

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.

- (3) For the purposes of subregulation (2), **SAA**, in relation to a covered asset class and a quarter, means:
- (a) unless paragraph (b) or (c) applies—the product’s strategic asset allocation to the covered asset class in relation to the quarter (expressed as a fraction); or
 - (b) unless paragraph (c) applies, if the product does not have a strategic asset allocation to the covered asset class in relation to the quarter—zero; or
 - (c) if the quarter is before the first quarter (the **initial quarter**) in relation to which the trustee of the superannuation fund reported to APRA, in accordance with the investment performance standard in relation to the initial quarter, a net return of the Part 6A product—the product’s strategic asset allocation to the covered asset class in relation to the initial quarter (expressed as a fraction).
- (4) Subregulation (5) applies if it is not possible under paragraph (3)(a), (b) or (c) to work out a strategic asset allocation to a covered asset class in relation to a quarter, as mentioned in the paragraph, because it is not clear whether particular information relevant to that strategic asset allocation relates to a particular concept in the asset allocation standard in relation to the quarter.
- (5) For the purposes of subregulations (2) and (3), treat the information as relating to a particular concept in the asset allocation standard in relation to the quarter if a determination under regulation 9AB.14:
- (a) specifies the superannuation entity, the asset class and the quarter; and
 - (b) states that the information relates to the concept.
- (6) Subsection (7) applies, for the purposes of the definition of **index**, in relation to a covered asset class and a quarter, in subsection (2), if:
- (a) the covered asset class for the quarter is identified in item 10 or 11 of the table in regulation 9AB.17 relating to the quarter; and
 - (b) the value at the end of the quarter of the assumed index for the covered asset class for the quarter is not publicly available earlier than 29 days after the end of the financial year.
- (7) For those purposes:
- (a) treat the value at the end of the quarter of the assumed index for the covered asset class for the quarter as being the value at the end of the quarter of the assumed index for the covered asset class identified in item 6 of the table in regulation 9AB.17 for the quarter; and
 - (b) treat the value at the end of the previous quarter of the assumed index for the covered asset class for the previous quarter as being the value at the end of the previous quarter of the assumed index for the covered asset class identified in item 6 of the table in regulation 9AB.17 for the previous quarter.

EXPOSURE DRAFT

Schedule 1 Amendments

- (8) Subregulation (9) applies in relation to the covered asset class for a quarter that is identified in item 16 of the table in regulation 9AB.17 relating to the quarter.
- (9) For the purposes of subregulation (2), treat *index*, in relation to that covered asset class and the quarter, as being the sum of the following:
 - (a) 25% of the index (worked out in accordance with subregulation (2)) in relation to the covered asset class identified in item 2 of the table in regulation 9AB.17 and the quarter;
 - (b) 25% of the index (worked out in accordance with subregulation (2)) in relation to the covered asset class identified in item 3 of that table and the quarter;
 - (c) 50% of the index (worked out in accordance with subregulation (2)) in relation to the covered asset class identified in item 13 of that table and the quarter.

9AB.14 APRA determination—information relating to concept in asset allocation standard

For the purposes of subregulations 9AB.13(5) and 9AB.15(5), APRA may make a determination, in writing, that states that *[specified information in respect of a specified superannuation entity in respect of a specified asset class and specified quarter relates to a specified concept in the asset allocation standard]*.

9AB.15 Meaning of *benchmark return*—lifecycle Part 6A products

- (1) This regulation applies to Part 6A products that are in the class of Part 6A product specified in relation to a financial year under subregulation 9AB.7(3).
- (2) The *benchmark return* for a Part 6A product for a lookback period for the product, is the amount calculated using the following formula, rounded to 4 decimal places (rounding up if the fifth decimal place is 5 or more):

$$\left\{ \prod_{t=1}^{4n} \left[1 + \sum_{j=1}^J \left(\sum_{a=1}^A \left\{ SAA_{a,j,t-1} \times \left[\frac{(1 + \text{index}_{a,t})}{(1 + \text{fee}_{a,t})^{\frac{1}{4}}} - 1 \right] \times [1 - ART_{a,t}] \right\} \times \{\text{lifestage weight}_{j,t}\} - BRAFE_t \right) \right] \right\}^{\frac{1}{n}} - 1$$

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.

BRAFE, in relation to a quarter, means the benchmark RAFE for the Part 6A product in relation to the quarter.

fee, in relation to a covered asset class and a quarter, means the assumed annual fee for the quarter for the covered asset class.

index, in relation to a covered asset class and a quarter, means the amount calculated using the following formula, rounded to 4 decimal places (rounding up if the fifth decimal place is 5 or more):

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

Note: For the covered asset class for a quarter that is identified in item 16 of the table in regulation 9AB.17 (other/commodities asset class), see subregulations (8) and (9).

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.12.

J means the number of lifestages of the Part 6A product.

lifestage weight, in relation to a lifestage and a quarter, means the Part 6A product's lifestage weight in relation to the quarter and the lifestage.

n means the number of quarters in the lookback period, divided by 4.

SAA, in relation to a covered asset class, a lifestage and a quarter, has the meaning given by subregulation (6).

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.

- (3) For the purposes of subregulation (2), **SAA**, in relation to a covered asset class, a lifestage and a quarter, means
 - (a) unless paragraph (b) or (c) applies—the product's strategic asset allocation to the covered asset class, the lifestage and the quarter (expressed as a fraction); or
 - (b) unless paragraph (c) applies, if the product does not have a strategic asset allocation to the covered asset class, the lifestage and the quarter—zero; or
 - (c) if the quarter is before the first quarter (the **initial quarter**) in relation to which the trustee of the superannuation fund reported to APRA, in accordance with the investment performance standard in relation to the initial quarter, a net return of the Part 6A product—the product's strategic asset allocation to the covered asset class, the lifestage and the initial quarter (expressed as a fraction).

EXPOSURE DRAFT

Schedule 1 Amendments

- (4) Subregulation (5) applies if it is not possible under paragraph (3)(a), (b) or (c) to work out a strategic asset allocation to a covered asset class in relation to a quarter, as mentioned in the paragraph, because it is not clear whether particular information relevant to that strategic asset allocation relates to a particular concept in the asset allocation standard in relation to the quarter.
- (5) For the purposes of subregulations (2) and (3), treat the information as relating to a particular concept in the asset allocation standard in relation to the quarter if a determination under regulation 9AB.14:
 - (a) specifies the superannuation entity, the asset class and the quarter; and
 - (b) states that the information relates to the concept.
- (6) Subsection (7) applies, for the purposes of the definition of *index*, in relation to a covered asset class and a quarter, in subsection (2), if:
 - (a) the covered asset class for the quarter is identified in item 10 or 11 of the table in regulation 9AB.17 relating to the quarter; and
 - (b) the value at the end of the quarter of the assumed index for the covered asset class for the quarter is not publicly available earlier than 29 days after the end of the financial year.
- (7) For those purposes:
 - (a) treat the value at the end of the quarter of the assumed index for the covered asset class for the quarter as being the value at the end of the quarter of the assumed index for the covered asset class identified in item 6 of the table in regulation 9AB.17 for the quarter; and
 - (b) treat the value at the end of the previous quarter of the assumed index for the covered asset class for the previous quarter as being the value at the end of the previous quarter of the assumed index for the covered asset class identified in item 6 of the table in regulation 9AB.17 for the previous quarter.
- (8) Subregulation (9) applies in relation to the covered asset class for a quarter that is identified in item 16 of the table in regulation 9AB.17 relating to the quarter.
- (9) For the purposes of subregulation (2), treat *index*, in relation to that covered asset class and the quarter, as being the sum of the following:
 - (a) 25% of the index (worked out in accordance with subregulation (2)) in relation to the covered asset class identified in item 2 of the table in regulation 9AB.17 and the quarter;
 - (b) 25% of the index (worked out in accordance with subregulation (2)) in relation to the covered asset class identified in item 3 of that table and the quarter;
 - (c) 50% of the index (worked out in accordance with subregulation (2)) in relation to the covered asset class identified in item 13 of that table and the quarter.

9AB.16 Meaning of *benchmark RAFE*

- (1) Work out the *benchmark RAFE* for a Part 6A product in relation to a quarter in accordance with the following subsections.
- (2) First:

-
- (a) if the Part 6A product is a MySuper product—identify all Part 6A products that exist at the end of the quarter that are MySuper products, and
- (b) otherwise—identify all Part 6A products that exist at the end of the quarter that are not MySuper products.
- (3) Next, construct a consecutive sequence of the RAFEs in relation to the quarter for each of the Part 6A products identified under subregulation (2), where the sequence:
- (a) starts with the lowest of those RAFEs; and
- (b) proceeds in ascending order of the amount of each of those RAFEs.

- (4) Next, work out the result of the following formula:

$$P = 0.5 \times (M + 1)$$

where:

M is the number of Part 6A products identified under subregulation (2).

- (5) If **P** is a whole number, the **benchmark RAFE** for the Part 6A product in relation to the quarter is the RAFE that occupies the place in the sequence mentioned in subregulation (3) corresponding to **P**.

Example: If **P**=5, then the benchmark RAFE is the fifth RAFE in that sequence.

- (6) If **P** is not a whole number, determine the **benchmark RAFE** mentioned in subregulation (1) by using the following formula:

$$RAFE_{PR} + [(RAFE_{PR+1} - RAFE_{PR}) \times (P - PR)]$$

where:

PR is **P** rounded down to the nearest whole number.

RAFE_{PR} is the RAFE that occupies the place in the sequence mentioned in subregulation (3) corresponding to **PR**.

RAFE_{PR+1} is the RAFE that occupies the place in the sequence mentioned in subregulation (3) corresponding to **PR + 1**.

RAFE for lifecycle Part 6A products

- (7) For the purposes of this section, if the Part 6A product is in the class of Part 6A products specified in relation to a financial year under subregulation 9AB.7(3) (lifecycle Part 6A products), treat the RAFE for the Part 6A product in relation to the quarter as the amount worked out using the following formula:

$$\sum_{j=1}^J (\text{Product's RAFE}_j \times \text{Product's lifestage weight}_j)$$

where:

Product's RAFE means the RAFE for the Part 6A product in relation to the quarter and a lifestage.

EXPOSURE DRAFT

Schedule 1 Amendments

Product's lifestage weight means the lifestage weight of the Part 6A product in relation to the quarter and a lifestage.

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.12.

J means the number of lifestages of the Part 6A product.

9AB.17 Meaning of covered asset class, assumed annual fee and assumed rate of tax

- (1) Subregulations (2) to (5) define the following:
 - (a) a **covered asset class** for a quarter starting on or after 1 July 2014;
 - (b) the **assumed index** for a covered asset class for such a quarter;
 - (c) the **assumed annual fee** for a covered asset class for such a quarter;
 - (d) the **assumed rate of tax** for a covered asset class for such a quarter.
- (2) A **covered asset class** for a quarter mentioned in paragraph (1)(a) is a class of assets identified in an item of the table in subregulation (7) by its description.
- (3) For the purposes of this section, in determining a covered asset class for a quarter, treat the term **Other/Commodities** as having the same meaning as that term has in the asset allocation standard in relation to that quarter.
- (4) The **assumed index** for a quarter mentioned in paragraph (1)(a) for a covered asset class for the quarter is the assumed index identified in the item of the table in subregulation (7) that identifies the covered asset class.
- (5) The **assumed annual fee** for a quarter mentioned in paragraph (1)(a) for a covered asset class for the quarter is the assumed annual fee identified in the item of the table in subregulation (7) that identifies the covered asset class.
- (6) The **assumed rate of tax** for a quarter mentioned in paragraph (1)(a) for a covered asset class for the quarter is the assumed rate of tax identified in the item of the table in subregulation (7) that identifies the covered asset class.
- (7) The table is as follows:

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	0.05%	0.00%

EXPOSURE DRAFT

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
		S&P/ASX 300 Total Return Index		
2	International Equity (hedged)	DE725341 MSCI All Country World Ex-Australia Equities Index with Special Tax (100% hedged to AUD)	0.11%	14.00%
3	International Equity (unhedged)	DN714533 MSCI All Country World Ex-Australia Equities Index with Special Tax (unhedged in AUD)	0.09%	14.00%
4	Australian Listed Property	ASA6PROP S&P/ASX 300 A-REIT Total Return Index	0.12%	14.00%
5	International Listed Property	RAHRSAH FTSE EPRA Nareit Developed ex Aus Rental 100% Hedged to AUD Net Tax (Super) Index	0.22%	14.00%
6	Australian Listed Infrastructure	FDCIISAH FTSE Developed Core Infrastructure 100% Hedged to AUD Net Tax (Super) Index	0.26%	14.00%
7	International Listed Infrastructure	FDCIISAH FTSE Developed Core Infrastructure 100% Hedged to AUD Net Tax (Super) Index	0.26%	14.00%
8	Australian Unlisted Property	MSCI/IPD Mercer IPD Australian Monthly Wholesale Property Fund Index – Post-fee Total Return (All funds)	0%	14.00%
9	International Unlisted Property	MSCI/IPD Mercer IPD Australian Monthly Wholesale Property Fund Index – Post-fee Total Return (All funds)	0%	14.00%
10	Australian Unlisted Infrastructure	MSCI Australia Quarterly Private Infrastructure Index (Unfrozen) - Post-fee Total Return (All funds)	0%	14.00%
11	International Unlisted Infrastructure	MSCI Australia Quarterly Private Infrastructure Index (Unfrozen) - Post-fee Total Return (All funds)	0%	14.00%

EXPOSURE DRAFT

Schedule 1 Amendments

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
12	Australian Fixed Interest	BACM0 Bloomberg Ausbond Composite 0+ Yr Index	0.10%	15.00%
13	International Fixed Interest	LEGATRAH Bloomberg Barclays Global Aggregate Index (hedged to AUD)	0.10%	15.00%
14	Australian Cash	BAUBIL Bloomberg Ausbond Bank Bill Index	0.04%	15.00%
15	International Cash	BAUBIL Bloomberg Ausbond Bank Bill Index	0.04%	15.00%
16	Other/Commodities		0.10%	14.50%

9AB.18 APRA's determination of alternative assumptions—paragraphs 60D(7)(b) and (c) of Act*APRA's determination of alternative assumptions*

- (1) For the purposes of paragraph 60D(7)(b) of the Act, APRA may, by legislative instrument, determine a specified alternative assumption in relation to a specified quarter covered by the table in regulation 9AB.17 that replaces one of the following assumptions in relation to that quarter:
 - (a) an assumed index identified in an item of that table;
 - (b) an assumed annual fee identified in an item of that table;
 - (c) an assumed annual rate of tax identified in an item of that table.
- (2) To avoid doubt, the determination may:
 - (a) specify an alternative assumption in relation to more than one specified quarter; or
 - (b) specify more than one alternative assumptions, each of which replaces one particular assumption mentioned in paragraph (1)(a), (b) or (c), in relation to a specified quarter; or
 - (c) specify more than one alternative assumption, each of which replaces one particular assumption mentioned in paragraph (1)(a), (b) or (c), in relation to more than one specified quarter.

Specified conditions for APRA's determination of alternative assumptions

- (3) For the purposes of paragraph 60D(7)(c) of the Act, subregulations (4), (5) and (6) specify conditions to be met before APRA can make a determination under subregulation (1).

- (4) Before making a determination under subregulation (1), APRA must consult with the Treasurer.
- (5) Before making a determination under subregulation (1) specifying an alternative assumption that replaces an assumption mentioned in paragraph (1)(a) (assumed index) in relation to a specified quarter, APRA must be reasonably satisfied that:
 - (a) the relevant assumed index identified in an item of the table in regulation 9AB.17 does or did not exist in relation that quarter; and
 - (b) the specified alternative assumption is substantially analogous to the relevant assumed index.
- (6) Before making a determination under subregulation (1) specifying an alternative assumption that replaces an assumption mentioned in paragraph (1)(b) or (c) (assumed annual fee or assumed annual rate of tax) in relation to a specified quarter, APRA must be reasonably satisfied that, as a result of material changes in the investment environment, the assumed annual fee or assumed rate of tax identified in an item of the table in subregulation 9AB.17(7) is no longer suitable in relation to that quarter.

9AB.19 Requirements for notification of fail assessment—subsection 60E(6) of Act

- (1) For the purposes of subsection 60E(6) of the Act, this subregulation specifies:
 - (a) forms in which a notice mentioned in subsection 60E(2) of the Act must be; and
 - (b) kinds of information that must be contained in such a notice.
- (2) The information set out in Schedule 2A is specified as a kind of information
- (3) If the notice includes an electronic communication as mentioned in subparagraph 60E(5)(a)(ii) of the Act:
 - (a) the text “Important notice about your super product’s performance” is specified as a kind of information; and
 - (b) inclusion of that text in the subject line for the electronic communication is specified as a form.

9AB.20 Requirements for reopening determination—subsection 60F(4) of Act

- (1) For the purposes of subsection 60F(4) of the Act, this regulation specifies a requirement in relation to a Part 6A product and an entity.

Note: Subsections 60F(3) and (4) of the Act provide that if APRA is satisfied that this requirement is met, it may make a determination that has the effect that each trustee of the entity is released from the obligation in subsection 60F(2) of the Act (to ensure that there are no new beneficiaries for the Part 6A product).
- (2) The requirement is that the performance measure for the Part 6A product for the most recently ended financial year equals or exceeds -0.005.

EXPOSURE DRAFT

Division 9AB.3—Comparison rankings

9AB.21 Specified formula as basis for ranking Part 6A products—performance assessment met

- (1) This regulation applies in relation to a Part 6A product for which the requirement in subsection 60D(1) of the Act is met in relation to a financial year.
- (2) For the purposes of paragraph 60J(3)(a) of the Act:
 - (a) this paragraph specifies the formula set out in regulation 9AB.23 (net return ranking formula) as a basis for ranking Part 6A products in relation to the financial year; and
 - (b) this paragraph specifies the formula set out in regulation 9AB.24 (fee ranking formula) as a basis for ranking that Part 6A products in relation to:
 - (i) a beneficiary who holds the Part 6A product; and
 - (ii) a year (the *relevant year*) that is the financial year, or the year that is the period of 12 months ending on 30 September, 31 December or 31 March in the next financial year.

9AB.22 Specified formula as basis for ranking Part 6A products—performance assessment *not* met

- (1) This regulation applies in relation to a Part 6A product for which the requirement in subsection 60D(1) of the Act is *not* met in relation to a financial year.
- (2) For the purposes of paragraph 60J(3)(a) of the Act:
 - (a) this paragraph specifies the formula set out in regulation 9AB.23 (net return ranking formula) as a basis for ranking Part 6A products in relation to the financial year; and
 - (b) this paragraph specifies the formula set out in regulation 9AB.24 (fee ranking formula) as a basis for ranking Part 6A products in relation to:
 - (i) a beneficiary who holds the Part 6A product; and
 - (ii) a year (the *relevant year*) that is the financial year, or the year that is the period of 12 months ending on 30 September, 31 December or 31 March in the next financial year.

9AB.23 Net return ranking formula

For the purposes of paragraphs 9AB.21(2)(a) and 9AB.22(2)(a), the formula is:

$$\left[\prod_{t=1}^{4n} (1 + NR_t) \right]^{\frac{1}{n}} - 1$$

where:

n means the number of whole quarters in the test period, divided by 4.

NR, in relation to a quarter, means the Part 6A product's net return in relation to 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 test period.

test period mean the period that:

- (a) starts at a time that:
 - (i) is no earlier than 8 years before the start of the financial year; and
 - (ii) is the start of a quarter in an earlier financial year; and
- (b) ends at the end of a quarter in the financial year.

9AB.24 Fee ranking formula

- (1) For the purposes of paragraphs 9AB.21(2)(b) and 9AB.22(2)(b), the formula is:

$$\text{applicable investment fee} + \text{applicable administration fee} + \text{applicable indirect cost ratio}$$

where:

applicable administration fee has the meaning given by subregulation (2).

applicable indirect cost ratio means the product of the following:

- (a) the relevant beneficiary's account balance in respect of the Part 6A product;
- (b) the Part 6A product's indirect cost ratio in relation to the relevant year.

applicable investment fee has the meaning given by subregulation (3).

- (2) For the purposes of subregulation (1), work out the *applicable administration fee* as follows:
- (a) first, work out the product of the following:
 - (i) an account balance in respect of the Part 6A product;
 - (ii) the Part 6A product's administration fee percentage in relation to the relevant year;
 - (b) work out the sum of the following:
 - (i) the result of paragraph (a);
 - (ii) the Part 6A product's administration fee flat amount in relation to the relevant year;
 - (c) if the Part 6A product does *not* have an administration fee cap in relation to the relevant year, the *applicable administration fee* is the result of paragraph (b);
 - (d) if the Part 6A product has an administration fee cap in relation to the relevant year, the *applicable administration fee* is the lesser of the following:
 - (i) the result of paragraph (b);
 - (ii) that administration fee cap.
- (3) For the purposes of subregulation (1), work out the *applicable investment fee* as follows:
- (a) first, work out the product of the following:
 - (i) an account balance in respect of the Part 6A product;
 - (ii) the Part 6A product's investment fee percentage in relation to the relevant year;

EXPOSURE DRAFT

Schedule 1 Amendments

- (b) work out the sum of the following:
 - (i) the result of paragraph (a);
 - (ii) the Part 6A product's investment fee flat amount in relation to the relevant year;
- (c) if the Part 6A product does *not* have an investment fee cap in relation to the relevant year, the *applicable investment fee* is the result of paragraph (b);
- (d) if the Part 6A product has an investment fee cap in relation to the relevant year, the *applicable investment fee* is the lesser of the following:
 - (i) result of paragraph (b);
 - (ii) that investment fee cap.

9AB.25 Specified methods for Part 6A ranking products—paragraph 60J(3)(b) of Act

- (1) For the purposes of paragraph 60J(3)(b) of the Act, the following subregulations specify methods for ranking Part 6A products according to the formulas specified in regulations 9AB.21 and 9AB.22.
- (2) This subregulation specifies the method of ranking Part 6A products from:
 - (a) the highest result of applying the formula set out in regulation 9AB.23 (net return ranking formula) in respect of a Part 6A product in respect of a financial year;to:
 - (b) the lowest result of applying that formula in respect of a Part 6A product in respect of the financial year.
- (3) This subregulation specifies the method of ranking Part 6A products from:
 - (a) the lowest result of applying the formula set out in regulation 9AB.24 (fee ranking formula) in respect of a Part 6A product in respect of a financial year;to:
 - (b) the highest result of applying that formula in respect of a Part 6A product in respect of the financial year.

100 In the appropriate position in Part 14

Insert:

Division 14.28—Transitional arrangements arising out of the Treasury Laws Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2021

14.29 Arrangements

- (1) The amendments made by this Schedule apply:
 - (a) in relation to MySuper products—on and after 1 July 2021; and
 - (b) in relation to other Part 6A products—on and after 1 July 2022.

-
- (2) If the financial year mentioned in subparagraph 9AB.3(1)(a)(ii) is the 2020-21 financial year, treat the reference in that subparagraph to 7 years as instead being a reference to 6 years.

200 After Schedule 2

Insert:

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

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

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

Your superannuation product *[insert the name of the superannuation entity and the name of the Part 6A product]* has performed poorly. You should consider moving your money into a different fund.

You currently have \$*[insert the beneficiary's account balance in respect of the Part 6A product on the date of this letter]* in your *[insert the name of the Part 6A product]*.

Your *[insert the name of the Part 6A product]* has failed the performance assessment conducted by the Australian Government. Your product underperformed its benchmark over the past *[insert the number of years in the lookback period for the Part 6A product in respect of the relevant financial year]* years to *[insert the date of the last day of the lookback period for the Part 6A product in respect of the relevant financial year]* by *[insert the performance measure for the Part 6A product for the relevant financial year, multiplied by -100]%*.

What can I do now?

Switching to a different super product is easy, and there are no fees involved. You can find a well-performing product using the YourSuper comparison tool. Go to yoursuper.gov.au or you can use the QR code below:

[insert QR code for yoursuper.gov.au]

Your super is your money.

Super is a long-term investment for your retirement. The decisions you make now will determine how much money you have to live off when you retire.

By switching into a better fund, you can potentially save thousands of dollars more for retirement.

Your questions answered

Why have I received this letter?

The Australian Government introduced an annual performance assessment of the earnings you are receiving on your super.

The purpose of this letter is to provide you with information to help you decide whether you want to stay with your current fund or choose a different fund.

What is the annual performance assessment?

The annual performance assessment compares the earnings of your product (after your super fund deducts fees) against similar funds over *[insert the number of financial years in the lookback period for the Part 6A product]* years.

EXPOSURE DRAFT

Schedule 1 Amendments

[If the Part 6A product is 2 or more Part 6A products treated as one Part 6A product under subsection 60G(2) of the Act, include the following paragraph]

The performance assessment treated your product as a combined product. This can occur for a number of reasons, including that your product is a successor product to an older product.

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

Your product is a lifecycle product which means your super will typically move in stages from growth investments when you're young to more conservative investments as you age. The annual performance assessment considers the overall performance of your product.

How do I choose the right super product?

You should consider whether the product grows your super savings, and how these returns vary from year to year. It is important to note that a super product that has performed strongly over the past 8 years is not guaranteed to perform well in the future.

Some products will better meet your retirement goals taking account of your age and work plans. For personal financial advice, you can engage a qualified financial planner or financial adviser.

What role does risk play?

Some super products target low returns over a long time but provide certainty. They may invest more of your super in loans to large businesses and governments. Your account balance in these funds will be more stable from year to year.

Other super products target high returns over a long time by investing your super in assets that carry higher risk. For example they may invest more of your super in Australian and overseas shares. Your account balance in these funds may change a lot from year to year.

Choosing the best risk category depends on your personal circumstances (including how long until you think you'll retire, and your personal preferences around risk).