**EXPOSURE DRAFT EXPLANATORY STATEMENT**

**Issued by authority of the Treasurer**

*Superannuation Industry (Supervision) Act 1993*

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

Section 353 of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Treasury Laws Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2021* (the proposed Regulations) is to make amendments supporting the implementation of Schedule 2 to the *Treasury Laws Amendment (Your Future, Your Super) Bill 2021* (the Bill).

Schedule 2 to the Bill amends the SIS Act to require the Australian Prudential Regulation Authority (APRA) to conduct an annual performance test for ‘Part 6A products’, which include MySuper products and other products if specified in regulations. A trustee providing such products will be required to give notice to its beneficiaries who hold a product that has failed the performance test. Where a product has failed the performance test in two consecutive years, the trustee is prohibited from accepting new beneficiaries into that product. APRA may lift the prohibition if circumstances specified in regulations are satisfied.

The proposed Regulations include amendments that support implementation of Schedule 2 to the Bill by specifying:

* when APRA must conduct the annual performance test, which products are subject to the annual performance test and the requirements for the annual performance test;
* the circumstances where products are to be treated as combined for the purposes of the amendments in the Bill, such as the performance test and triggering the prohibition on a trustee from accepting new beneficiaries into an underperforming product;
* the form and content requirements for the notice a trustee is required to give to beneficiaries who hold a product that has failed the performance test;
* that an RSE licensee is required to make information about a failed annual performance test result in relation to a product it offers publicly available on its website;
* the circumstances where APRA may lift a prohibition on a trustee from accepting new beneficiaries into an underperforming product; and
* formulas as a basis for, or methods for, ranking Part 6A products, which under the amendments in the Bill, APRA may give to the Australian Taxation Office (ATO) to enable the implementation of the YourSuper comparison tool announced by the Government as part of the Your Future, Your Super reforms.

The amendments relating to the new annual performance test and supporting implementation of the comparison tool apply in relation to MySuper products on and after 1 July 2021 and in relation to other classes of beneficial interest in a regulated superannuation fund specified in the regulations on and after 1 July 2022. The comparison tool will cover MySuper products.

Details of the proposed Regulations are set out in Attachment A.

The proposed Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The proposed Regulations commence on the day after registration.

**Regulation Impact Statement**

The ‘Superannuation Reform—Your Future, Your Super’ measure announced in the 2020-21 Budget is estimated to have a total regulatory impact of $5.1 million per year on business and individuals.

The Productivity Commission’s report, *Superannuation: Assessing Efficiency and Competitiveness*, has been certified as a process and analysis equivalent to a Regulation Impact Statement for the purposes of the Government decision to implement this measure. The report can be accessed through the Australian Parliament House website.

**ATTACHMENT A**

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

Section 1 – Name of the Proposed Regulations

This section provides that the name of the Regulations is the *Treasury Laws Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2021* (the proposed Regulations).

Section 2 – Commencement

Schedule 1 to the proposed Regulations would commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

The proposed Regulations are made under the SIS Act.

Section 4 – Schedule

This section provides that each instrument that is specified in the Schedule to the proposed Regulations will be amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedule to this proposed Regulations has effect according to its terms.

Schedule 1 – Amendments *Treasury Laws Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2021*

**Background**

The purpose of the proposed Regulations is to make amendments supporting the implementation of Schedule 2 to the *Treasury Laws Amendment (Your Future, Your Super) Bill 2021* (the Bill). The Bill was introduced in the House of Representatives on 17 February 2021.

Schedule 2 to the Bill amends the SIS Act to require APRA to conduct an annual performance test for ‘Part 6A products’, which include MySuper products and other products if specified in regulations. A trustee providing such products will be required to give notice to its beneficiaries who hold a product that has failed the performance test. Where a product has failed the performance test in two consecutive years, the trustee is prohibited from accepting new beneficiaries into that product. APRA may lift the prohibition if circumstances specified in the regulations are satisfied.

The proposed Regulations include amendments that support implementation of Schedule 2 to the Bill by specifying:

* when APRA must conduct the annual performance test, which products are subject to the annual performance test and the requirements for the annual performance test;
* the circumstances where products are to be treated as combined for the purposes of the amendments in the Bill, such as the performance test and triggering the prohibition on a trustee from accepting new beneficiaries into an underperforming product;
* the form and content requirements for the notice a trustee is required to give to beneficiaries who hold a product that has failed the performance test;
* that an RSE licensee is required to make information about a failed annual performance test result in relation to a product it offers publicly available on its website;
* the circumstances where APRA may lift a prohibition on a trustee from accepting new beneficiaries into an underperforming product; and
* formulas as a basis for, or methods for, ranking Part 6A products, which under the amendments in the Bill, APRA may give to the ATO to enable the implementation of the YourSuper comparison tool announced by the Government as part of the Your Future, Your Super reforms.

**Item 10 (proposed regulation 9AB.6 of the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regs) - When APRA must conduct the annual performance test**

Under proposed section 60C of the SIS Act (to be inserted by the Bill), APRA must perform a performance assessment for every Part 6A product, in each financial year. Proposed subsections 60C(2) to (4) state that APRA must make this assessment, determining if the product meets the requirements of the assessment and notify the trustee/s within a period given by the regulations after the end of each financial year of the outcome of the assessment and determination.

These proposed Regulations require APRA to make the determination and give the notification to the trustee/s before 1 September.

**Item 10 (proposed paragraph 9AB.8(2)(b), regulations 9AB.2, 9AB.3 and 9AB.9 of the SIS Regs) - Products that are subject to the annual performance test**

*Trustee-directed products*

The annual performance test applies for ‘Part 6A products’, which are defined in proposed section 60B of the SIS Act (to be inserted by the Bill) to be a MySuper product or a class of beneficial interest in a regulated superannuation fund, if that class is identified by regulations. The proposed Regulations include a class to be known as ‘trustee-directed products’.

Broadly, trustee-directed products are products where the trustee has control over the design of the investment strategy of the product. The definition is designed to cover choice products where the trustee makes decisions regarding the product’s exposure to certain sectors and the underlying assets the product is invested in.

Products where the only control the trustee has over the product is to either offer or not offer the product to members are excluded from the definition of a trustee-directed product. These products include where the trustee offers for a third party to manage the investment strategy for the member’s superannuation interest. This exclusion does not apply where the trustee is an associate of or has influence over the third party managing the interest.

The amendments are also designed to exclude products that are single‑sector investment options, where the member selects a product that mainly has exposure to only one type of asset class. Single‑sector options are excluded because they are typically used in combination by a beneficiary in order to design their own bespoke diversified investment strategy. The amendments exclude single‑sector investment options by requiring a trustee-directed product to contain at least two asset classes, where the strategic asset allocation for each of those classes must exceed 10 per cent.

The product must also not allow the member to direct the trustee to alter the amount invested in any particular class of asset. This ensures the trustee has the requisite control over the product for the performance test to be effective and meaningful.

Superannuation interests that are supporting a superannuation income stream in the retirement phase are not captured by this definition. These products have broader aims than accumulation products, which should primarily be focussed on investment performance.

Superannuation interests that are defined‑benefit interests are not captured by the definition. For these types of interests, the product’s investment performance across the life of the interest does not directly impact the outcome for the beneficiary in retirement. Generally this is due to the employer, rather than the beneficiaries, incurring the cost of underperformance in defined‑benefit interests.

Other products offered by superannuation trustees where the benefit to the member is not contingent on the investment performance of the product are also excluded from the definition of a trustee‑directed product. These products typically are contracts for insurance or products where the benefit is provided on the realisation of a particular risk.

See explanation of application provisions below for information about when the test will apply for trustee-directed products.

*Products with certain number of years of performance history*

The amendments specifying classes of Part 6A product for the purposes of proposed section 60D(1) of the SIS Act (requirements for the product in relation to the financial year) ensure that products with less than 5 whole financial years of performance history are generally exempt from the performance test in the relevant financial year (unless APRA exercises discretion to subject these products to the test).

The number of years of a product’s performance history (generally corresponding to a product’s ‘lookback period’) is the number of financial years since the start of the first whole quarter for which a trustee has reported a ‘net return’ for the product up until (and including) 30 June of the financial year for which the annual performance assessment is conducted. The start of this period will not be the first part quarter for which net returns have been reported to APRA, as any quarter in which the superannuation fund was not, for the entire duration of the quarter, offering the product as potentially generating returns is to be disregarded. Any quarter where there was not at least one beneficiary holding the product will also be disregarded.

This approach strikes a balance between maximising coverage of the performance test and giving new products a chance to get established. The annual performance test is generally intended to assess a product’s long‑term investment performance.

APRA may exercise discretion to determine that a product with less than 5 whole financial years of performance history is to be subject to the performance test. In making such a determination, APRA must have regard to whether any other Part 6A products offered by the entity or an ‘associated entity’ (within the meaning of the *Corporations Act 2001*) have failed the performance test in any financial year. APRA could also consider any other features of the product or entity that would give rise to concerns regarding its likely future performance. For example, a product’s fees, or the investment governance arrangements of the entity offering the product.

Allowing products with less than 5 whole financial years of performance history to be subject to the performance test at APRA’s discretion also provides some scope for addressing avoidance behaviour where trustees have intentionally closed a product or opened a ‘new’ product in order to avoid being subjected to the performance test.

APRA’s determination is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*.

**Item 10 (proposed regulations 9AB.3, 9AB.7, 9AB.8 and 9AB.10 to 9AB.18 of the SIS Regs) - Requirements for annual performance test**

Proposed section 60D of the SIS Act (to be inserted as part of the Bill) allows regulations to specify the requirements that a product must meet to satisfy the annual performance test.

The requirements for the performance test are based on the methodology adopted by the Productivity Commission in its 2018 report, *Superannuation: Assessing Efficiency and Competitiveness,* and further refined by APRA in its Heatmap analysis, available on the APRA website. The test will:

* allow the performance of products to be compared easily as the performance benchmark will be tailored to each product’s asset allocation;
* be customised to individual products and continue to provide funds with flexibility in constructing their investment portfolio;
* assess actual performance, net of fees and taxes; and
* be calculated over a time period that allows funds to target long-term returns, rather than having one or two years of poor performance result in a failure of the test.

The consideration of administration fees is designed to ensure that the results of the performance test are more reflective of the final outcomes for beneficiaries holding the product.

The methodology separates the infrastructure and property asset classes out into unlisted and listed assets. Unlisted asset classes can represent a different risk-return profile to their listed counterparts.

There are different requirements for standard Part 6A products and lifecycle Part 6A products. For the purposes of these amendments, a lifecycle Part 6A product is a Part 6A product where the supporting investments are divided into categories that are referrable to a lifestage. A standard Part 6A product is a Part 6A product that is not a lifecycle Part 6A product.

For all classes of Part 6A product (standard and lifecycle), the annual performance test is passed for a product if the product’s ‘actual return’ minus its ‘benchmark return’ (termed the product’s ‘performance measure’) is greater than or equal to -0.005. In other words, the product’s actual return (expressed as a fraction) cannot fall short of its benchmark return by more than 0.005 (which is equivalent to 0.5 percentage points) on average over the relevant period of eight years.

A product’s ‘actual return’ is the annualised net returns the product actually achieved (over a certain performance period, termed the ‘lookback period’). The net return is the net investment return including ‘relevant administration fees and expenses’ (or ‘RAFE’), which is defined by reference to various items reported to APRA.

A product’s ‘benchmark return’ involves the construction of an annualised benchmark net return that has been tailored for each product (and constructed over the same lookback period). The construction of the benchmark involves deducting the median ‘RAFE’ across the applicable category of products for each quarter in the lookback period.

Therefore, a product’s final test result (or ‘performance measure’) to be compared against the -0.005 threshold, is its net investment performance (taking into account administration fees) relative to the benchmark’s net investment performance (which includes a benchmark administration fee based on the median ‘RAFE’ for its product category). MySuper products will be compared against the median ‘RAFE’ for all MySuper products and trustee-directed products will be compared to the median RAFE for all trustee-directed products.

In order to provide certainty and consistency, these amendments provide for rounding rules that apply for certain calculations used in the performance test. For certain calculation output that is 5 or more decimal places, the output should be rounded to 4 decimal places. This should be done by rounding up if the 5th decimal place is a 5 or higher, or down if the 5th decimal place is a 4 or lower. Where calculation output is 4 decimal places or lower, generally the rounding rules do not apply and the value should be inputted into the formula in full. There is a special rounding rule for one variable, which involves rounding down to the nearest whole number.

*Requirements to satisfy the annual performance test (standard Part 6A products)*

The amendments provide the formula for calculating ‘actual return’ for a standard Part 6A product.

The variables in the formula include ‘n’, ‘NR’ and ‘t’.

The variable ‘n’means the number of quarters in the lookback period, divided by 4 (which essentially captures the number of financial years, including part financial years in the lookback period, where part financial years are in units of quarters). For example, n could take the values 5, 5.25, 5.5, 5.75, which corresponds to 5 financial years, 5 financial years and 1 quarter, 5 financial years and 2 quarters and 5 financial years and 3 quarters respectively.

Generally, the ‘lookback period’ for a Part 6A product in respect of a financial year means the period that starts on the start of the first whole quarter for which a trustee has reported a ‘net return’ for the product to APRA and ends on 30 June of the financial year for which the assessment is made. In determining the first whole quarter, any quarter in which the superannuation fund was not offering the product as potentially generating returns for the entire duration of the quarter, or any quarter where there was not at least one beneficiary holding the product, is disregarded. Generally, this means a product's lookback period will include the number of financial years (including part financial years) for which there is data for the product, counting back from the financial year for which the performance assessment is made.

However, the rules are designed such that the lookback period for a Part 6A product will not include more than 8 financial years of performance history, counting backwards from the 30 June in the financial year for which the assessment is made. A transitional rule is provided for the first performance assessment, which is conducted for the financial year 2020-21, such that a maximum of 7 financial years of performance history is included in the lookback period. This aligns the lookback period with available APRA data.

The variable ‘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.

The variable ‘NR’ in relation to a quarter has the same meaning as in the *Financial Sector (Collection of Data) (reporting standard) determination No. 40 of 2015* or an analogous legislative instrument that was in force in the past or that is made in the future to replace that instrument. Such instruments are defined as the ‘investment performance standard’ in the proposed Regulations. ‘NR’ is reported to APRA on a quarterly basis. The proposed Regulations incorporate the *Financial Sector (Collection of Data) (reporting standard) determination No. 40 of 2015* as in force at the commencement of the instrument*,* and analogous past and future instruments. The amendments in proposed subsection 60D(13) of the SIS Act (to be inserted by the Bill) ensure that despite subsection 14(2) of the *Legislation Act 2003*, regulations may apply, adopt or incorporate, with or without modification, any matter contained in an instrument as in force or existing from time to time. The incorporated determinations, past, present and future, are freely and publicly available or will be available on the Federal Register of Legislation.

The variable ‘NR’ is the product’s net investment return less the product’s ‘RAFE’. The subtraction of ‘RAFE’ ensures the ‘actual return’ formula accounts for how a product has performed on administration fees across the lookback period for the product. ‘RAFE’ is defined as the sum of representative member administration fees and costs, representative member administration-related tax expense/benefit, representative member advice fees and costs, and representative member advice-related tax expense/benefit, as reported to APRA in accordance with the investment performance standard.

The proposed Regulations provide the formula for calculating the ‘benchmark return’ for a standard Part 6A product.

The variables in the formula include ‘n’ and ‘t’, which have the same meaning as in the formula for calculating the ‘actual return’ (see above).

It is necessary to refer to a table of covered asset classes with corresponding fee, tax and index assumptions (inserted by the proposed Regulations) in order to derive or unpack the other variables and components of the formula. The table inserted by the proposed Regulations covers the assumptions that apply for the quarters starting on or after 1 July 2014, which corresponds to the first quarter included in the lookback period for products with 8 or more financial years of performance history, as of 1 July 2021.

The variable ‘a’ represents a ‘covered asset class’, which can be identified in the table of assumptions by its description. For example, if a=2, then ‘a’ represents the covered asset class in item 2 of the table, which is International Equity (hedged). The variable ‘A’ means the number of covered asset classes in the table for the quarter. At this point in time, ‘A’ is equal to 16 in every case, as there are 16 items in the table for quarters starting on or after 1 July 2014. Future amendments to the table of assumptions could add additional asset classes for different quarters, in which case ‘A’ may take on a different value.

The variable ‘SAA’ generally means the product’s strategic asset allocation. ‘Strategic asset allocation’ is the benchmark asset allocation value reported to APRA through the *Financial Sector (Collection of Data) (reporting standard) determination No. 13 of 2015* or an analogous legislative instrument that was in force in the past or that is made in the future to replace that instrument. Such instruments are defined as the ‘asset allocation standard’ in the proposed Regulations. ‘SAA’ is reported to APRA on a quarterly basis. The proposed Regulations incorporate the *Financial Sector (Collection of Data) (reporting standard) determination No. 13 of 2015* as in force at the commencement of the instrument*,* and analogous past and future instruments. The incorporated determinations, past, present and future, are freely and publicly available or will be available on the Federal Register of Legislation.

For a given quarter t, the value of ‘SAA’ used in the formula will be the value as at the end of quarter t-1 (that is, the value reported to APRA for the preceding quarter). In other words, represents the strategy for a given asset class heading into t.

However, for a product that is first established in quarter t, there may be no value of ‘SAA’ at the end of quarter t-1. In such a case, the value of ‘SAA’ used in the formula will be the value at the end of quarter t (rather than the value in t-1).

The amendments clarify that in other cases where the product does not have a strategic asset allocation in respect of a covered asset class (set out in the table of assumptions) for a quarter, ‘SAA’in respect of the covered asset class for the quarter is zero.

The amendments ensure that in cases where it is not possible to work out the product’s strategic asset allocation to a particular covered asset class in relation to a quarter, due to data being insufficiently granular, APRA can make a determination to resolve the problem. For example, APRA may make assumptions about the ‘asset domicile type’, ‘currency hedging ratio’ and/or the ‘asset listing type’ in order to work out the strategic asset allocation for a covered asset class, where this data was not reported to APRA pursuant to the *Financial Sector (Collection of Data) (reporting standard) determination No. 13 of 2015.* ARPA’s determination is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*.

The variables in the formula also include ‘index’, ‘fee’ and ‘ART’ which represent for a particular covered asset class for a quarter, a benchmark return for the covered asset class to be calculated using the index formula inputting data derived by reference to an index assumption, the assumed annual fee, and assumed rate of tax, respectively.

The relevant assumed annual fee and assumed rate of tax for a particular covered asset class for a quarter can be found in the last two columns in the table of assumptions.

In order to work out the ‘index’ (that is, the benchmark return for the covered asset class), generally the relevant assumed index for the asset class must be identified from the table of assumptions, which sets out the index name and its Bloomberg ticker or unique identifier. For the table items relating to infrastructure and property unlisted asset classes, there is no applicable ticker code. The index name and ticker (if available) will enable the information necessary to compute the benchmark return for the covered asset class (or ‘index’) to be identified. For example, some index values could be found on the Bloomberg terminal.

The table of assumptions is set out in the proposed Regulations to provide certainty, transparency and consistency in the performance test that funds will be subject to. It is anticipated that the table will be updated for future assumption changes, containing a complete record of the assumptions for past quarters in one place.

However, there may be a need for APRA to make a legislative instrument to deal with material changes in the interim before new regulations are made updating the relevant assumptions.

Proposed paragraph 60D(7)(c) of the SIS Act (to be inserted by the Bill) allows regulations to be made specifying conditions to be met before APRA can make a legislative instrument specifying alternative assumptions (than those set out in the table in the regulations). Different conditions apply if the assumption relates to fees or taxes, as compared to the conditions that apply if the assumption relates to an index.

In relation to providing a different fee or tax assumption, these amendments provide that all of the following conditions be met:

* APRA consult with the Treasurer before making such a legislative instrument; and
* APRA must be reasonably satisfied that as a result of material changes in the investment environment, the assumed fee or assumed rate of tax specified in the table is no longer suitable in relation to that quarter.

In relation to providing a different index assumption, these amendments provide that all of the following conditions be met:

* APRA consult with the Treasurer before making such a legislative instrument;
* APRA must be reasonably satisfied that the assumed index specified in the table does or did not exist in relation to a particular quarter; and
* APRA must be reasonably satisfied that the alternative index is one that is substantially analogous to the existing index specified in the table.

Where a product is comprised of investments in a class of assets that meet the description ‘Other/Commodities’ (which has the same meaning as in the ‘asset allocation standard’), the class of assets is treated as falling into the last item of the table. The assumed annual fee and assumed rate of tax for this category of assets are 0.10 per cent and 14.50 per cent, respectively. Consistent with the way such assets are treated in APRA’s Heatmap analysis, these figures have been calculated using a weighted average of the fee and tax assumptions from the ‘International Equity (hedged)’, ‘International Equity (unhedged)’ and the ‘International Fixed Interest’ covered asset classes, where the weights are 25 per cent, 25 per cent and 50 per cent respectively. For example, the fee of 0.10 per cent was computed by taking the sum of the following:

* 0.25 multiplied by the assumed annual fee for International Equity (hedged);
* 0.25 multiplied by the assumed annual fee for International Equity (unhedged); and
* 0.50 multiplied by the assumed annual fee for International Fixed Interest.

The proposed Regulations also include rules to ensure that in applying the formula for benchmark return, the ‘index’ for the ‘Other/Commodities category’ covered asset class and a given quarter is calculated by taking the weighted-average of the indices for that quarter for the same asset classes as above, using the same weights as above.

For the ‘Australian Unlisted Infrastructure’ and ‘International Unlisted Infrastructure’ covered asset classes, in some circumstances, a different assumed index will apply to that specified for those covered asset classes in the table of assumptions. Those circumstances are where the index value for those covered asset classes for the last quarter in the lookback period for Part 6A products is not publicly available within 28 days after the end of the financial year for which the performance test is conducted. In such circumstances, the regulations provide that the assumed index for ‘Australian Listed Infrastructure’ is instead to be used in relation to the final 2 quarters in the lookback period for the product (noting that the values in the final 2 quarters are needed to calculate the ‘index’ for the final quarter in the lookback period). This ensures that where there is a delay in the release of applicable data, the regulations provide an alternative assumption that is to be used instead, allowing APRA to conduct the performance test by 1 September each year.

The variable ‘BRAFE’ means the benchmark RAFE for a given category of products. The inclusion of ‘BRAFE’ in the formula for ‘benchmark return’ ensures that administration fees are included in a product’s benchmark.

Depending on whether the product being assessed is a MySuper product or a trustee‑directed product, the product categories are either all MySuper products on offer or all trustee-directed products (as defined in the proposed Regulations), regardless of whether or not these products are subject to the annual performance test in the particular financial year. The calculation of ‘BRAFE’ involves taking the 50th percentile ‘RAFE’ for the particular category of products for each quarter in the product’s lookback period.

See above for information on ‘RAFE’, which is calculated by taking the sum of various items reported to APRA in accordance with the investment performance standard. In order to work out the 50th percentile ‘RAFE’ a consecutive sequence of ‘RAFE’ for all products in the particular category should be constructed. For the purposes of constructing this sequence, the ‘RAFE’ for a lifecycle product will be calculated as the weighted-average of each lifestage’s ‘RAFE’, with the weights determined by the value of investments referable to each lifestage. This will ensure that a single ‘RAFE’ figure for the overall lifecycle product can be used in the sequence.

*Requirements to satisfy the annual performance test (lifecycle Part 6A products)*

The proposed Regulations provide the formula for calculating the ‘actual return’ for a lifecycle Part 6A product.

The variables in the formula include ‘n’ and ‘t’, which have the same meaning as in the formula for calculating the ‘actual return’ for a standard Part 6A product (see above).

Consistent with the definition for a standard Part 6A product, the variable ‘NR’ for a particular quarter and lifestage is also defined by reference to the *Financial Sector (Collection of Data) (reporting standard) determination No. 40 of 2015.* See above for further information.

The variable ‘J’ means the number of lifestages in the Part 6A product. The variable ‘j’ represents a lifestage of the Part 6A product, in a consecutive sequence of lifestages, where if j=1, the lifestage is the lifestage that applies to the youngest beneficiaries who hold the product. It is possible for a lifecycle product to be structured such that there is more than one lifestage for a given set of beneficiary age characteristics. For example, a lifecycle product could have two sub-lifestages by superannuation balance, such as two groups of 40-50 year olds, one group with low balance and one group with high balance. In such a situation, APRA may determine the order for the sub-lifestages in the consecutive sequence. The order of the lifestages in the sequence does not impact on the results from the calculation. APRA’s determination is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*.

The ‘lifestage weight’ variable provides an asset-based weighting for each lifestage. The weights are determined by the market value of investments referable to each lifestage as a proportion of the market value of all investments supporting the lifecycle Part 6A product. These market values are reported to APRA quarterly.

For a given quarter, the market value will be the value as at the end of the previous quarter (that is, the value heading into a given quarter). However, for a product that is first established in a given quarter, there may be no market value at the end of the previous quarter. In such a case, the market values to be used in working out the ‘lifestage weight’ for the lifestage will be the value at the end of the given quarter (rather than the value at the end of the previous quarter).

The proposed Regulations provide the formula for calculating the ‘benchmark return’ for a lifecycle Part 6A product.

The variables in the formula include ‘n’, ‘t’, ‘j’, ‘J’, and ‘lifestage weight’ which have the same meaning as in the formula for calculating the ‘actual return’ for a lifecycle Part 6A product. See above.

The variables in the formula also include ‘a’, ‘A’, ‘ART’, ‘fee’, ‘index’, ‘SAA’ and ‘BRAFE’, which have the same meaning as in the formula for calculating the ‘benchmark return’ for a standard Part 6A product. See above.

**Items 10 and 200 – (proposed regulation 9AB.19 and Schedule 2A of the SIS Regs) - Form and content requirements for trustee notification to beneficiaries**

If APRA has determined a Part 6A product has failed the performance test, APRA will notify the trustee of the entity that offers the product. Proposed section 60E of the SIS Act (to be inserted by the Bill) requires the trustee of the entity to provide a notice to each beneficiary of the entity who holds the product, within 28 days of receiving notice of the assessment, that the product has failed the performance test.

Proposed subsection 60E(5) of the SIS Act provides that notices must be provided by post to the beneficiary’s last known address, and via email to each beneficiary’s email address (if there is a nominated email address).

Proposed subsection 60E(6) of the SIS Act states that the notice must be in the form and contain information of a kind specified in regulations. These amendments set out the standard words and forms that are to be used by trustees when informing beneficiaries of a failed performance test.

The standard words and forms of the beneficiary notification ensure that notice of underperformance is presented to all beneficiaries in a consistent, clear, concise and effective manner.

All beneficiary notifications must explain to the member that their superannuation product has performed poorly, and that the member should consider moving their interest into a different fund. The notification gives details of the test applied to determine the product’s underperformance, and also provides beneficiaries with information on how to change to a superannuation product that may perform better than the current product they hold. The notification also directs beneficiaries to the YourSuper comparison tool for information on products that have met the requirements of the performance test.

The notification includes standard words covering questions and answers on why the member has received the notification, and how poor performance of a superannuation product can negatively affect their retirement income.

The amendments also provide additional words that the notification must include where the member’s product has been assessed as a combined product and where the member’s product is a lifecycle product.

**Item 5 (proposed paragraph 2.38(2)(ea) of the SIS Regs) - Requirement for RSE licensee to make information about fail test result publicly available**

Paragraph 29QB(1)(b) of the SIS Act allows regulations to prescribe information or documents that a RSE licensee must ensure is made publicly available and kept up to date on the RSE’s website. This regulation making power supports the existing list of information and documents prescribed in subregulation 2.38(2) of the SIS Regs.

Where a product does not pass the performance test for the first time, the RSE licensee must ensure that a description of the circumstances is made available on the RSE’s publicly available website. The RSE licensee must also take this step where the product has failed the performance test previously, but it is not the product’s second consecutive failure, in which case the product is closed to new members.

The purpose of this requirement is to warn prospective beneficiaries when a product (which remains open) has been assessed as underperforming in the latest financial year. There is no need for this information to be published on the website if the product is closed to new beneficiaries (as a consequences of two consecutive fails) as there cannot be prospective beneficiaries to warn because the product is closed to new members.

**Item 10 (proposed regulation 9AB.20 of the SIS Regs) - APRA determination to lift prohibition**

Proposed section 60F of the SIS Act (to be inserted as part of the Bill) allows regulations to specify the requirements that a product must meet for APRA to be allowed to make a determination to lift the prohibition from accepting new beneficiaries into products.

These amendments provide that APRA may make a determination for a product to reopen to accept new beneficiaries, if the product passes the annual performance test in a subsequent financial year. The requirements for the annual performance test are described above.

**Item 10 (proposed regulations 9AB.4 and 9AB.5 of the SIS Regs) - Circumstances where products treated as combined**

Proposed section 60G of the SIS Act (to be inserted as part of the Bill) allows regulations to specify one or more kinds of circumstances that multiple Part 6A products may be treated as combined. Specified kinds of circumstances may allow for multiple Part 6A products to be treated as being one Part 6A product;

* treating anything that happened in relation to a single Part 6A product as having happened in relation to the combined Part 6A product; and
* treating a person who holds a single Part 6A product as holding the combined Part 6A product.

Proposed section 60G of the SIS Act (to be inserted as part of the Bill) also allows regulations to specify matters that APRA must take into account in exercising its discretion to make a declaration that products are to be treated as combined.

The amendments provide that if APRA considers that making a determination is appropriate in the circumstances, APRA may make a determination in writing that 2 or more specified Part 6A products offered by one or more specified regulated superannuation funds should be treated as combined. APRA must give notice of the determination, in writing, as soon as practicable after making it, to each trustee of the regulated superannuation funds specified in the determination.

The purpose of this is to allow the performance test to be appropriately applied in a range of situations where products should be assessed together and to address circumstances where trustees have intentionally closed a product or opened a new but similar product in order to bypass the consequences of failing one or more performance tests.

If products are treated as a combined product or the performance history of one product is attributed to another product, a product may be found to have failed the performance test, or failed the performance test in two consecutive years. As a consequence a Part 6A product may be prohibited from accepting new beneficiaries.

APRA’s determination is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*.

**Item 10 (proposed regulations 9AB.21 to 9AB.26 and Division 9AB.3 of the SIS Regs) - Amendments to support implementation of YourSuper comparison tool**

The YourSuper comparison tool will be available on an interactive website designed to make it easy for beneficiaries to choose a superannuation product based on fees and performance information.

Proposed section 60J of the SIS Act (to be inserted as part of the Bill) allows regulations to specify formulas and methods by which Part 6A products can be comparatively ranked, and allows APRA to pass the information necessary for ranking products on to the ATO to publish on a website maintained by the Commissioner of Taxation. The Bill provides that the ATO must publish this information to the extent that it relates to Part 6A products that are MySuper products. Whilst the proposed Regulations made for this purpose provide transparency about the basis on which superannuation products will be ranked on the YourSuper website, the proposed Regulations do not prescribe the specific layout and design of the website.

The proposed Regulations prescribe that Part 6A products, including lifestages of products that are lifecycle products, should be ranked in certain ways. It is intended that initially only MySuper products will be ranked. These products are the default product for most members, and therefore most common type of superannuation interest. As MySuper products are also generally held by the most disengaged members, it is therefore important that comparing products is easy, clear and intuitive so that MySuper product holders can see if their product is meeting their needs.

Part 6A products should be ranked according to two methods. First, products should be ranked by net returns. Ranking products by net returns will allow members to assess the return their investment is generating in comparison to the returns of other products. Second, products are ranked by total annual fees. Using this method, members are able to see the fees charged by their superannuation fund in comparison to other products managed by other superannuation funds. This comparison will allow members to make informed judgements on the value of the fees that they pay and promote competition between superannuation funds.

When products are ranked according to the two methods articulated above, the information for each product will include the result of the most recent performance test with products that passed the test ranked separately to products that failed the test. For lifestages of lifecycle products, the result of the most recent performance test will be the result for the whole lifecycle product. Members will be able to clearly differentiate between those products that are performing and those that are underperforming.

The information necessary for the rankings is reported to APRA under the *Financial Sector (Collection of Data) (reporting standard) determination No. 41 of 2015.* The proposed Regulations incorporate this instrument as in force at the commencement of the instrument*,* and analogous past and future instruments. The incorporated determinations, past, present and future, are freely and publicly available or will be available on the Federal Register of Legislation.

**Item 10 (proposed regulation 9AB.1 and Part 9AB of the SIS Regs) - Consequential amendments**

The proposed Regulations insert a new Part 9AB of the SIS Regs, setting out the requirements for the annual performance test and amendments supporting the implementation of the YourSuper comparison tool.

Consequential amendments are made to insert relevant headings and an interpretation provision for the new Part, containing supporting definitions.

**Item 100 (proposed regulation 14.29 and Division 14.28 of the SIS Regs) - Application and transitional rules**

The amendments insert a new Division 14.28 of the SIS Regs to deal with application and transitional rules.

The amendments relating to the new annual performance test and supporting implementation of the comparison tool apply in relation to MySuper products on and after 1 July 2021 and in relation trustee-directed products on and after 1 July 2022. The YourSuper comparison tool will cover MySuper products.

A transitional rule is provided for the first performance assessment, which is conducted for the financial year 2020-21, such that the lookback period will commence no earlier than the 1 July that is 6 years before 1 July 2020 (being 1 July 2014). This means a maximum of 7 financial years of performance history is included in the lookback period. This aligns the lookback period with available APRA data.