



Actuaries  
Institute.

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Dear Mr Moore

### Addressing regulatory constraints on superannuation actuarial advice

The Actuaries Institute (**Institute**) is seeking a change to address regulatory constraints which, in our view, inappropriately restrict the provision of superannuation actuarial advice. The constraints result in a growing risk that superannuation fund trustees and employer sponsors will be unable to obtain advice from an actuary on certain matters which actuaries are best qualified to address, and which are necessary to help superannuation fund trustees and employer sponsors support fund members' interests.

### Regulatory constraints

Under the law, all employers irrespective of their size or sophistication must be treated as retail clients for the purposes of financial product advice regulation when giving advice about superannuation.

Under the law, trustees of superannuation funds with net assets of less than \$10 million (**Small Trustees**) are also classified as retail clients for the purposes of financial product advice regulation when giving advice about superannuation.

Given this retail client classification, and in the absence of any exemption, we are concerned that actuaries that provide advice to employers or Small Trustees about superannuation must also be registered financial advisers because they are deemed to be providing personal financial product advice.

In addition, while trustees of superannuation funds with more than \$10 million of assets (**Large Trustees**) are classified as wholesale clients for the purpose of the financial advice legislation, in the situation where a copy of actuarial advice to the trustee is provided to an affected employer sponsor, there is a concern that this would also be classified as personal financial product advice to a retail client under the secondary advice provisions. Consequently, Large Trustees may also be unable to access some types of superannuation actuarial advice.

### Adequacy of supply of dually qualified superannuation actuaries

Superannuation actuaries complete most of their work for Large Trustees, for which they are not required to be registered as financial advisers. Independent advice to Small Trustees and employers is usually a small portion of their actuarial work, which would not justify the time and cost commitment now involved in becoming a financial adviser.

As a result, there is only a small pool of superannuation actuaries who are also registered financial advisers (numbering in the tens, not the hundreds).

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The vast majority of this small pool are experienced superannuation actuaries currently relying on the transitional rules available to those who were financial advisers at 1 January 2019 to maintain their registration. This required them to pass the financial adviser exam and, with the exception of the education standard, to continue to meet the adviser standards. However, there is a looming tipping point when the transitional rules expire at 1 January 2026 and these actuaries will then need to meet the education standard to maintain their registration. Some of these actuaries will meet the education standard via the 'experienced provider' pathway amendments, but some will not. Noting that the list of approved degrees and equivalent qualifications do not contain actuarial courses or degrees, we expect that only a minority of these actuaries will consider it worthwhile to undertake the several years of study – of subjects that are unrelated to their core practice – to meet the education standard. Consequently, we expect that the small pool will diminish further from 1 January 2026.

We also anticipate very few, if any, new superannuation actuary entrants to this 'dually qualified' pool, for the reasons mentioned above.

This prospect raises public policy concerns, recognised by APRA and ASIC, that apart from actuaries there are no professions with the expertise to advise superannuation trustees and employers on certain technical superannuation issues. We are concerned that in effect, employers may not be able to obtain appropriate professional advice, in respect of their sponsored superannuation schemes, and superannuation trustees may not be able to obtain appropriate professional advice in respect of certain matters.

### **Examples of superannuation actuarial advice to employers**

Examples of the type of technical advice that actuaries (where permitted) provide to the employers who sponsor superannuation schemes are set out in the Appendix to this letter. Typically, this type of advice could not be provided by any professional other than an actuary.

The employers are typically medium to large corporates or public sector (including the Commonwealth Government, State and Territory governments, and Local governments).

To provide such advice the superannuation actuary must generally consider a range of complex factors including:

- The future demographic experience (resignation, retirement, death, disablement, various benefit option take-up, pensioner mortality including improvements and for spouse and children).
- Future projections of fund membership and benefits, allowing for uncertainty.
- Stochastic projection of assets and benefit liabilities to estimate the likely range of outcomes for employer contributions and corporate financial disclosures under alternative investment strategies.
- Modelling that is tailored to the unique benefits and experience of the employer's fund.

The secondary advice provisions may also inhibit the provision of advice on some of the above matters to Large Trustees in situations where a copy of the actuarial advice to the trustee is to be provided to an affected employer sponsor.

### **Examples of actuarial advice to Small Trustees**

Examples of the type of technical advice that actuaries (where permitted) provide to Small Trustees are also set out in the Appendix to this letter.

Again, this type of advice typically could not be provided by any professional other than an actuary.

We understand that an actuary may be able to provide some of the above services to a Small Trustee – such as those services required to comply with certain legislation – without the service being treated as personal financial product advice, by utilising the exclusions provided under regulation 7.1.29 of the *Corporations Regulations 2001*, particularly sub-regulation (5).

Whilst the availability of the sub-regulation (5) exclusion seems clear for services required to comply with the specified legislation, for other services the conditions of regulation 7.1.29(5)(c) (i), (ii) and (iii)

are often problematic. The requirement to include the 7.1.29(5)(d) statement with the advice is also somewhat problematic, as it may be inferred as indicating the actuary providing the advice lacks relevant qualifications and competence and that a prudent trustee would seek further advice.

## Possible solutions

### 1. Amendment to the definition of retail client

One potential solution would be to amend the definition of retail client so that:

- Trustees of APRA-regulated funds (which we note must meet APRA licensing requirements) and trustees of exempt public sector schemes are all classified as wholesale clients, irrespective of the size of the fund.
- Employers (perhaps those above a certain size) are classified as wholesale, rather than retail, clients in relation to advice on superannuation products.

This reflects that Employers who require or seek advice on superannuation from an actuary are generally substantial businesses, though local offshoots of overseas businesses sometimes have small numbers of employees whilst in start-up or wind-down phase. If the Government considered it necessary for an employer-sponsor exemption to apply only to employers above a certain size (for example at least 20 or 50 or 100 employees), the Institute would support this provided that the test could be based on the size of the parent company in relevant circumstances.

### 2. Specific exemption for actuaries

An alternative possible solution would be to provide a specific exemption for actuaries. This could be either a broad exemption, or a more targeted exemption.

#### Broad exemption for actuaries

There is a precedent in the exclusion of lawyers and tax agents under the *Corporations Act 2001*. One possible solution is the addition of an additional subsection in 766B of the *Corporations Act 2001* along the lines of the subsection (5) exclusion for “advice given by a lawyer”. This sub-section states:

*766B Meaning of financial product advice*

*(5) The following advice is not financial product advice:*

*(a) **advice given by a lawyer** in his or her professional capacity, about matters of law, legal interpretation or the application of the law to any facts;*

*(b) except as may be prescribed by the regulations—any other **advice given by a lawyer in the ordinary course of activities as a lawyer**, that is reasonably regarded as a necessary part of those activities;*

*(c) except as may be prescribed by the regulations—**advice given by a registered tax agent or BAS agent** (within the meaning of the *Tax Agent Services Act 2009*), that is given in the ordinary course of activities as such an agent and that is reasonably regarded as a necessary part of those activities.*

We suggest that a similar broad exemption could be appropriate for actuaries rather than a narrower targeted exemption. Actuaries are already subject to stringent professional education standards and the Institute’s Code of Conduct sets out ethical and professional standards that members of the Institute must observe including requiring actuaries to only provide advice where they have appropriate knowledge and skills.

#### Targeted exemption for actuaries

Another possible solution is a more closely targeted exemption from the personal financial product advice requirements for actuarial advice.

There is regulatory precedent for an exclusion from certain standards applicable to the provision of a service that recognises the specialist expertise of actuaries. Regulation 13 of the *Tax Agent Services*

Regulations 2009 (**TASR exemption**) excludes from the definition of a 'tax agent service' (in section 90.5 of the *Tax Agent Services Act 2009*):

*“(k) a service that is required, by a law of the Commonwealth or of a State or Territory, to be provided only by an actuary;*

*(l) a service provided by an actuary in relation to either or both of the following:*

*(i) a defined benefit superannuation scheme;*

*(ii) an allocation from a reserve in a superannuation scheme other than a defined benefit superannuation scheme.”*

Limitations could be considered based on one or more of the type, recipient or provider of the advice. We suggest the following as a basis for further discussion:

Aspect	TASR exemption example	Possible definition for superannuation advice exemption
Type of advice	(k) legally required to be provided only by an actuary, or (l) advice relating to a defined benefit scheme or to an allocation of reserve in an accumulation scheme	(a) legally required to be provided only by an actuary, or (b) advice relating to a defined benefit scheme, or (c) advice relating to an accumulation scheme, other than an SMSF ( <b>Note 1</b> )
Recipient of advice	Not restricted	Trustee other than an SMSF trustee ( <b>Note 2</b> ) Employer sponsor with more than x employees ( <b>Note 3</b> )
Provider of advice	Must be an actuary	Must be an actuary – could tighten to RSE actuary-type requirements if considered necessary ( <b>Note 4</b> )

## Notes

**Note 1:** In our view the TASR Section 13 exemption wording is not wide enough to be used without modification for an appropriate superannuation advice exemption. For example, it would not permit:

a) advice to employers on:

- group insurance arrangements in accumulation funds
- contribution rates to 'target defined benefit' arrangements in accumulation funds (calculated at individual member level, usually for ex-defined benefit members where the employer has discontinued their defined benefit arrangements)
- investment arrangements for an accumulation fund
- appropriate superannuation options in accumulation funds in situations of corporate merger, acquisition or divestiture activities

b) advice to Small Trustees on:

- insurance arrangements for an accumulation fund
- individual member contribution rates to 'target defined benefit' arrangements in an accumulation fund, where the trustee passes the advice on to the employer
- investment arrangements for an accumulation fund

**Note 2:** Alternatively, the trustee of an APRA-regulated superannuation fund or the trustee of an exempt public sector superannuation scheme.

**Note 3:** Needs to cover potential employer sponsors as well as current employer sponsors of an APRA-regulated superannuation fund or an exempt public sector super scheme; also any size test should be able to be met by the size of the owners or potential owners of those employers (e.g. should cover a

large overseas employer setting up operations in Australia or considering purchasing operations in Australia).

**Note 4:** Based on the RSE actuary requirements in paragraph 24 of [SPS 520 Fit and Proper](#), the exemption could apply to an actuary who *“has a minimum of five years’ relevant experience in the provision of actuarial services to RSE licensees and RSEs or in superannuation more generally, that is sufficiently relevant and recent to provide reasonable assurance that the person is familiar with current issues in the provision of actuarial services to the business operations of RSE licensees”*, perhaps adding *“or to employer sponsors of RSEs or exempt public sector superannuation schemes”*.

## In Conclusion

The need for a legislative remedy to these regulatory constraints recognises that:

- The advice given by an actuary about superannuation are given in the actuary’s professional capacity, pertaining to actuarial matters and judgement around the likely demographic experience, cohort modelling and financial projections, and ultimately support fund members’ interests. Giving this advice to employer sponsors or small trustees that are deemed as retail clients should merit different treatment from the broad policy intent under general circumstances, which aims to ensure strong consumer protections in the giving of personal financial product advice.
- Actuaries are already subject to stringent professional education, standards and conduct. The Institute’s Code of Conduct sets out ethical and professional standards that members of the Institute must observe including requiring actuaries to only provide advice where they have appropriate knowledge and skills.
- It is an unnecessary and onerous requirement for actuaries to register as a financial adviser because many would find it too onerous to meet an education standard that does not recognise any actuarial courses or degrees previously undertaken.
- There is precedent for similar relief given to other professions, namely for lawyers and tax agents.

The looming tipping point when the transitional rules for the experienced adviser pathway expire at 1 January 2026 creates a pressing need to resolve this regulatory constraint on the supply of superannuation actuarial advice.

The Institute would welcome the opportunity to discuss this matter with Treasury and will be in contact to seek a meeting.

Yours sincerely

(Signed) Tim Jenkins  
Chair, Superannuation and Investments Practice Committee

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## **APPENDIX**

### **Examples of superannuation actuarial advice to employers**

Examples of the type of technical advice that actuaries (where permitted) provide to the employers who sponsor superannuation schemes, include:

- Appropriateness of defined benefit (DB) employer contribution rate recommendations to a trustee
- Appropriate investment strategy for assets supporting defined benefits
- Implications of DB superannuation liability accounting requirements for the employer's corporate financial statements
- Appropriate approaches to wind up or successor fund transfer of defined benefits
- Appropriate superannuation options in situations of corporate merger, acquisition or divestiture activities
- Advice on benefit design changes including to insurance
- Advice on options for return of surplus and potential associated benefit improvements
- Advice on DB pension risk management, including buy-in/buy-out options
- Calculations of an individual member's future defined benefit using only factual data and any actuarial assumptions set for the DB scheme

### **Examples of actuarial advice to Small Trustees**

Examples of the type of technical advice that actuaries (where permitted) provide to Small Trustees include:

- Actuarial investigations of DB superannuation schemes
- Advice on investment strategy and implementation of strategy
- Provision of Superannuation Guarantee benefit certificates for DB schemes
- Provision of Funding and Solvency Certificates for DB schemes
- Preparation of various types of tax-related certificates
- Advice in respect of benefit conversions
- Advice on DB pension risk management, including buy-in/buy-out options
- Advice on scheme wind-up