



Practice Guideline 499.09 Actuarial Requirements of Prudential Standard SPS 160

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1 INTRODUCTION

1.1 Application

- 1.1.1 This Practice Guideline applies to a Member providing advice to a Trustee of a Defined Benefit (DB) Fund about certain aspects of SPS 160, including:
- (a) monitoring of the financial position of the DB Fund against the Shortfall Limit;
 - (b) action on breach of the Shortfall Limit;
 - (c) Interim Investigations; and
 - (d) Restoration Plans.
- 1.1.2 SPS 160 includes special provisions relating to unfunded or partly unfunded public sector schemes. This Practice Guideline is not relevant to Members preparing advice in respect of these schemes.
- 1.1.3 This Practice Guideline also applies to Members who support another Member in providing advice about a DB Fund in accordance with this Practice Guideline, as relevant to their contribution to the Services.
- 1.1.4 Legislation and other requirements or guidance which may be relevant to the work covered by this Practice Guideline are listed below:
- (a) Prudential Standard SPS 160 Defined Benefit Matters;
 - (b) Prudential Practice Guide SPG 160 Defined Benefit Matters;
 - (c) Reporting Standard SRS 160.1 Defined Benefit Member Flows;
 - (d) the Superannuation Industry (Supervision) Act 1993 (Cth);
 - (e) the Superannuation Industry (Supervision) Regulations 1994 (Cth);
 - (f) Professional Standard 400 Investigations of the Financial Condition of Defined Benefit Superannuation Funds;
 - (g) Professional Standard 404 Valuation of Superannuation Fund Assets; and
 - (h) Practice Guideline 499.08 - Shortfall Limit required under Superannuation Prudential Standard 160.
- 1.1.5 A Member who provides advice under this Practice Guideline as an RSE Actuary in accordance with SPS 160:

- (a) must be an Eligible Actuary; and
- (b) must exercise his or her independent professional judgement and give impartial advice.

Members providing advice under this Practice Guideline, but not as an RSE Actuary, and Members supporting the Member providing advice as an RSE Actuary under this Practice Guideline are not required to be an Eligible Actuary.

- 1.1.6 All work performed under this Practice Guideline, whether by the Member providing advice or by a Member supporting the Member providing advice, is designated as an Applicable Service. As such, the Member's attention is directed towards Practice Guideline 1 (General Actuarial Practice). In the case of a Member supporting the Member providing advice, Practice Guideline 1 applies as relevant to their contribution to the Services.
- 1.1.7 There are no previous versions of this Practice Guideline. It replaces Discussion Note: Actuarial Requirements of Superannuation Prudential Standard 160.

1.2 About this Practice Guideline

- 1.2.1 This Practice Guideline:
 - (a) has been prepared in accordance with the Institute's Policy for Developing Professional Practice Documents; and
 - (b) is to be applied in the context of the Code.
- 1.2.2 This Practice Guideline is intended to assist Members providing advice to Trustees in relation to meeting certain requirements under SPS 160.
- 1.2.3 This Practice Guideline is not mandatory. Even so, if this Practice Guideline covers the Services a Member provides, then the Member should consider explaining any significant departure from this Practice Guideline to the Principal, and record that explanation.

1.3 Relationship to PG 1

- 1.3.1 Compliance with PG 1 is a pre-requisite to compliance with this PG. References in PG 1 to 'the applicable Professional Practice Document (PPD)' or "all applicable PPDs" should be interpreted as applying equally to this PG, as appropriate.

1.4 Other relevant documents

- 1.4.1 This Practice Guideline must be applied in the context of the relevant legislation, regulation and accounting standards. If there is a conflict in wording, then the legislation, regulation, and accounting standards take precedence over this Practice Guideline.

- 1.4.2 In this context, legislation, regulation, and accounting standards include, laws, regulations, prudential standards, subordinate standards, rules issued by government authorities and standards issued by professional bodies which have the force of law. Also included are relevant modifications or substitution of these. Similarly, a reference to a Professional Standard or Practice Guideline includes any modification or replacement of that Professional Standard or Practice Guideline.
- 1.4.3 Apart from the Code or a Professional Standard, from legislation or from regulatory standards, no other document, advice or consultation can be taken to modify or interpret the requirements of this Practice Guideline.
- 1.4.4 This Practice Guideline does not constitute legal advice. Any interpretation or commentary within this Practice Guideline regarding specific legislative or regulatory requirements reflects the expectations of the Institute but does not guarantee compliance under applicable legislation or regulations. Accordingly, Members should seek clarification from the relevant regulator and/or seek legal advice in the event they are unsure or require specific guidance regarding their legal or regulatory obligations.

2 COMMENCEMENT DATE

This Practice Guideline commences on 1 July 2023.

3 DEFINITIONS AND INTERPRETATION

- 3.1 In this Practice Guideline:

'Actuarial Investigation' means an initial or regular actuarial investigation (but not an Interim Investigation) of a DB Fund required by SPS 160.

'Applicable Services' means Services that are designated in an Institute Professional Standard or Practice Guideline as being Applicable Services.

'APRA' means the Australian Prudential Regulation Authority.

'Board' means the Board of directors or group of individual trustees of an RSE licensee and 'group of individual trustees' has the meaning given in section 10(1) of the SIS Act.

'Code' means the Code of Conduct of the Institute.

'Eligible Actuary' means:

- (a) a Fellow or Accredited Member of the Institute; and
- (b) a Member who is eligible to act in an actuarial capacity as an RSE Actuary pursuant to a requirement under SPS 160.

'DB Fund' has the same meaning as applies to 'defined benefit fund' for the purposes of SPS 160. This includes a defined benefit sub-fund.

'DB Fund Member' has the same meaning as a defined benefit member of a DB Fund as used in SPS 160.

'Interim Investigation' means an actuarial investigation carried out by an Eligible Actuary to meet the requirements of paragraph 17(a) of SPS 160.

'Interim Investigation Date' means the effective date at which assets and Vested Benefits are to be assessed or estimated in the Interim Investigation.

'Minimum Benefit' has the same meaning as in PS 400.

'Minimum Benefit Ratio' is determined in accordance with clause 5.15.2 of PS 400.

'Operational Risk Financial Requirement' or **'ORFR'** has the same meaning as in SPS 160.

'PS 400' means Professional Standard 400 Investigations of the Financial Condition of Defined Benefit Superannuation Funds.

'PS 404' means Professional Standard 404 Valuation of Superannuation Fund Assets.

'Restoration Plan' means a plan prepared by the Trustee of a DB Fund in accordance with paragraph 32(d) of SPS 160.

'RSE Licensee' has the same meaning as in Section 10 of the SIS Act.

'Satisfactory Financial Position' (SFP) is defined in accordance with SPS 160.

'SIS' means the SIS Act and SIS Regulations together.

'SIS Act' means the Superannuation Industry (Supervision) Act 1993 (Cth).

'SIS Regulations' means the Superannuation Industry (Supervision) Regulations 1994 (Cth).

'Shortfall Limit' means the Shortfall Limit set by the RSE licensee in accordance with SPS 160.

'SPG 160' means APRA Prudential Practice Guide SPG 160 Defined Benefit Matters

'SPS 160' means APRA Prudential Standard SPS 160 Defined Benefit Matters.

'SRS 160.1' means APRA Reporting Standard SRS 160.1 Defined Benefit Member Flows.

'Trustee' has the same meaning as an RSE Licensee.

'Unsatisfactory Financial Position' (UFP) and **'Unsatisfactory'** are as defined in paragraph 8 of SPS 160.

'Vested Benefit' has the same meaning as in PS 400.

'Vested Benefit Index' (VBI) means the Vested Benefit ratio funding status measure calculated in accordance with the requirements of PS 400.

3.2 A word that is derived from a defined word has a corresponding meaning.

- 3.3 Other capitalised terms used in this Practice Guideline have the same meaning as set out in the Code.

4 BACKGROUND

4.1 Requirements of SPS 160

- 4.1.1 SPS 160 is directed at establishing requirements for a Trustee of a DB Fund to manage the fund with the objective of enabling the assets of the fund to meet the liabilities of the fund as they become due.

- 4.1.2 The key requirements of SPS 160 include requirements:

- (a) regarding the establishment of a Shortfall Limit;
- (b) regarding the monitoring of the financial position of a DB Fund against the Shortfall Limit;
- (c) regarding the timing of Actuarial Investigations and the content and timing of the reports on those investigations;
- (d) for Interim Investigations in certain circumstances, including the content and timing of reports on Interim Investigations;
- (e) for Restoration Plans in certain circumstances, where a DB Fund falls into a UFP and/or is in breach of its Shortfall Limit; and
- (f) for RSE Actuaries and Trustees in relation to a fund which is permitted to self-insure benefits.

- 4.1.3 This Practice Guidelines covers items (b), (d) and (e). Refer to section 1.1.4 for other professional standards and practice guidelines that are relevant to Members when meeting the other requirements of SPS 160.

- 4.1.4 Where applicable, Members should emphasise to Boards that, while the defined terms SFP and UFP are based on the adequacy of assets to cover Vested Benefits, this is only one measure of the adequacy of funding. In particular, the assessment of a DB Fund's financial position and a suitable funding program also need to consider the adequacy of funding of the accrued benefit liabilities (which for some funds may materially exceed Vested Benefits).

4.2 Unsatisfactory Financial Position reporting requirements

- 4.2.1 The reporting requirements under section 130 of the SIS Act apply while carrying out actuarial functions under the prudential standards. Hence, for example, a Member performing an actuarial function under SPS 160 who forms the opinion that the fund's financial position may be, or may be about to become, Unsatisfactory, is required to

immediately inform the Trustee and APRA. Members should refer to Practice Guideline 499.03 Prudential Reporting under the SIS Act (PG 499.03) for further guidance.

4.3 Technical Insolvency

4.3.1 SPS 160 specifically provides that the SPS 160 UFP requirements do not apply if the DB Fund is technically insolvent. The SIS Act specifies requirements in relation to a DB Fund that is technical insolvent, along with the requirements for funding and solvency certificates. It is noted that this results in the arguably anomalous situation whereby a technically insolvent fund is permitted to have a restoration period of up to 5 years to return to a solvent position (which will still usually be a UFP), whereas a DB Fund which is in a UFP but not technically insolvent has a maximum restoration period of 3 years to a SFP (unless otherwise agreed with APRA).

4.3.2 Nevertheless, even though the SIS Act requirements permit a restoration period (to a solvent position) of up to 5 years where a fund is technically insolvent, it would be expected that the Member and Trustee would put in place a Restoration Plan which aims to restore a SFP within the shortest practical period, which would usually be shorter than 5 years.

5 SHORTFALL LIMITS

5.1 Monitoring financial position against Shortfall Limits

5.1.1 Paragraph 13 of SPS 160 requires the Board to determine and implement a monitoring process designed to detect, on a timely basis, when a DB Fund has, or may have, fallen into an UFP and/or breached the Shortfall Limit.

5.1.2 The Trustee is likely to ask a Member to advise on an appropriate process. It is also possible that a Member could be involved in preparing or reviewing the figures underlying the VBI calculation.

5.1.3 In general, monitoring on a quarterly basis is considered appropriate. However, as indicated in SPG 160, for a DB Fund in a strong financial position it may only be necessary to monitor the VBI on an annual basis. (SRS 160.1 requires Vested Benefits in respect of DB Funds to be reported to APRA quarterly.)

5.1.4 SPG 160 indicates that the frequency of monitoring would be expected to increase with market volatility. This comment can be interpreted as generally relating to where there is an unusually large market fall. A Member should consider whether additional monitoring is appropriate based on factors such as:

- (a) the frequency of monitoring (if the monitoring is only annual, then it is more likely additional monitoring would be appropriate);
- (b) the level of the VBI and its sensitivity to adverse investment experience (accumulation components of benefits may reduce the impact of investment experience on the VBI);

- (c) the investment strategy - additional monitoring is more likely to be appropriate the more sensitive the investment returns are to market falls (for example, a high exposure to listed equities); and
 - (d) the impact of cash flow on the VBI and the risk of having to redeem assets with depressed values to meet short term benefit payments.
- 5.1.5 An example of a reasonable process in such circumstances would be for the Member to provide advice to the Trustee as to whether it was considered necessary to bring forward the next scheduled monitoring date (say from the end of the current quarter).
- 5.1.6 Where monitoring is quarterly, it is expected that the need to bring forward a quarterly review because of a market downturn would arise infrequently. If monitoring is monthly it would be expected to be very infrequent.
- 5.1.7 SPG 160 refers to the use of estimates of Vested Benefits and assets in the monitoring process. There are several areas where it may be appropriate to use estimated values where the VBI is being calculated. Examples include:
 - (a) the use of "roll forward" methods for assets or liabilities;
 - (b) valuing pensions;
 - (c) valuing benefit options; and
 - (d) estimating contribution accruals.
- 5.1.8 In determining whether it would suffice for an estimated (rather than actual) value to be used, it is expected that consideration would generally be given to the potential variation between the estimated and actual amounts and the value of the particular item relative to the total value of Vested Benefits or assets. Another relevant consideration would be how close the VBI is to 100%. An estimate may also be used prior to the final calculation being completed.
- 5.1.9 It would also generally be expected that:
 - (a) the values and estimates used when monitoring the Shortfall Limit would be consistent with the values and estimates used for reporting under SRS 160.1; and
 - (b) the method of calculating Vested Benefits and assets, particularly any estimates used, would be consistent from period to period.
- 5.1.10 Other items which could be included as part of the monitoring process are:
 - (a) the total Minimum Benefits and the Minimum Benefits Ratio; or
 - (b) an indication of the level of the VBI which would correspond to a Minimum Benefits

Ratio of 100%.

5.2 Action on Breach of Shortfall Limit

- 5.2.1 If it appears to a Trustee that a DB Fund may be in breach of its Shortfall Limit, and an Actuarial Investigation is not due for six months or more, the Trustee must appoint an RSE Actuary to carry out an Actuarial Investigation or an Interim Investigation as soon as practicable. If in this circumstance an Actuarial Investigation is due within six months, the RSE Actuary must advise the Trustee as to whether action should be taken prior to the completion of the next Actuarial Investigation. In either case the requirements apply unless an Actuarial Investigation is already taking place, a Restoration Plan is already in place or the DB Fund is technically insolvent.
- 5.2.2 It is understood that, in paragraph 17(a)(ii) of SPS 160, the words “a regular investigation scheduled under paragraph 14 is not due for six months or more” are intended to be read as “a regular investigation scheduled under paragraph 14 is not due to commence for six months or more”, consistent with the wording of paragraph 17(b)(ii) of SPS 160. Further, the date an Actuarial Investigation is ‘due’ or ‘due to commence’ means the ‘valuation date’, being the effective date of the Actuarial Investigation as set out in paragraph 21 of SPS 160.
- 5.2.3 If it appears that the Shortfall Limit has been breached, and the effective date (valuation date) of the next Actuarial Investigation is not within 6 months, either an Interim Investigation is required (refer section 6 of this Practice Guideline) or the next Actuarial Investigation can be brought forward to a date within 6 months. If the latter action is taken, paragraph 17(b) of SPS 160 then applies.
- 5.2.4 Matters to consider in deciding whether or not to recommend bringing forward the next Actuarial Investigation may include:
- (a) the availability of sufficiently reliable member and financial data at a suitable date within the next 6 months;
 - (b) whether the DB Fund's annual review date can be used – if not, then if the next regular investigation is brought forward, the following regular investigation period may also need to be shorter than the usual 1 or 3 years;
 - (c) whether the reasons for the Shortfall Limit breach are apparent – if it is not feasibly due to known or readily identifiable experience (for example, investment returns), a thorough analysis of the financial position via an Actuarial Investigation may be desirable; and
 - (d) the requirements of PS 400 and SPS 160 in regard to Actuarial Investigations.

- 5.2.5 A DB Fund found to be in an UFP but above its Shortfall Limit is not required to establish a Restoration Plan if the investigation is an Interim Investigation, but is required to establish a Restoration Plan if the investigation is an Actuarial Investigation.
- 5.2.6 If it appears that the Shortfall Limit has been breached, and the next Actuarial Investigation is due within 6 months, an Interim Investigation is not required. However, the RSE Actuary is required to provide actuarial advice as to whether action should be taken prior to the completion of the next Actuarial Investigation.
- 5.2.7 A decision to take no action prior to the completion of the next Actuarial Investigation could mean, in theory, a difference of up to 12 months in the date by which advice must be provided to the Trustee.
- 5.2.8 In preparing advice about whether action should be taken prior to the completion of the next Actuarial Investigation, it is expected that the Member would generally consider, amongst other things:
- (a) the length of time to the next Actuarial Investigation;
 - (b) the level of the VBI;
 - (c) the level of the Minimum Benefits Ratio;
 - (d) fund experience since the date of calculation of the VBI, particularly investment experience and, in the case of smaller funds, significant benefit payments;
 - (e) any known future events which could affect the DB Fund's financial position (for example, a retrenchment program, significant benefit payments or the transfer of a group of members);
 - (f) the risk of future short term experience causing a material deterioration in the funding level (for example, in a small fund, benefit payments may have a material impact);
 - (g) the funding method and the level of employer contributions being made; and
 - (h) whether the employer(s) is a government or semi government employer and the strength of their legal obligation to pay contributions when requested.
- 5.2.9 If, after advising that no action is required, subsequent events lead to an unexpected worsening of the financial position, it may be appropriate for the Member to consider further advice. Hence, a 'no action' recommendation could be made subject to

further actuarial advice being sought if, for example, there is further adverse investment experience or the VBI falls below a certain level.

5.2.10 The type of action which could be taken prior to the completion of the next Actuarial Investigation includes, but is not limited to:

- (a) more frequent monitoring of the VBI, possibly with nominated trigger points for further actuarial advice to be sought;
- (b) communication with the employer sponsor(s) regarding the potential impact on funding requirements;
- (c) commencement of discussions with the employer sponsor(s) regarding possible remediation programs;
- (d) an increase in the level of employer contributions; and
- (e) an arrangement for the employer to pay "top up" contributions in respect of benefits paid until the results of the Actuarial Investigation are available or the financial position has improved to the extent that such "top-up" contributions are no longer considered necessary. Top up contributions may relate to all defined benefit payments or only certain payments (for example, retrenchment benefits or with-consent early retirement benefits where these are in excess of the Vested Benefit). It would be unusual to recommend top ups in respect of accumulation benefits, but there may be circumstances where the Member considers this appropriate having regard to the wind-up position and the likelihood of wind-up.

5.2.11 SPS 160 does not specify any particular time frame for the RSE Actuary to provide advice as to whether action should be taken prior to the completion of the next Actuarial Investigation. In practice, it may be necessary for the Member to liaise with both the Trustee and the employer sponsor(s) in preparing this advice. It would generally be expected that the advice would be provided as soon as practicable. Where the Member considers that some immediate action should be taken, advice on this aspect could be provided in advance of advice on other recommended actions.

6 INTERIM INVESTIGATIONS

6.1 Prior to Interim Investigation

6.1.1 Whilst not specifically required by SPS 160, where an Interim Investigation is required, it would be appropriate for the RSE Actuary to consider whether any action should be taken prior to the completion of the Interim Investigation and, if so, to advise the Trustee of recommended actions. Refer to Section 5.2 of this Practice Guideline for comments on possible issues to consider.

6.2 Valuation date and methodology

6.2.1 It is expected that the choice of valuation date (Interim Investigation Date) and methodology would have regard to the purposes of the Interim Investigation, which include to enable a suitably accurate estimate to be made of defined benefit Vested Benefits and defined benefit assets and, if required, a suitable remedial contribution program to be determined with reasonable confidence, within the specified timeframe. The choice of Interim Investigation Date and methodology will also be influenced by the particular DB Fund's circumstances, including matters such as:

- (a) the availability of data at a date close to the date at which the Trustee has determined that an Interim Investigation is required;
- (b) the sensitivity of the Vested Benefits and the VBI to experience - in particular, the extent to which projections based on data from an earlier date, with suitable adjustments for ascertainable subsequent experience (where this may have a material impact on the VBI), can be reasonably expected to produce suitably accurate estimates. This will in turn depend on factors such as:
 - i. the number of DB Fund Members;
 - ii. the impact that individual DB Fund Member experience may have on the Vested Benefits;
 - iii. the design of the benefits (for example, the potential for significant increases in Vested Benefits on a DB Fund Member reaching the early retirement age or electing a pension option);
 - iv. the extent to which Vested Benefits are based on current salary or a final average salary or depend on crediting rates/unit prices; and
 - v. the significance of 'greater of' benefits;
- (c) subsequent investment experience - for example, if there has been a strong recovery in investment markets and the estimated VBI at a current date is significantly in excess of the Shortfall Limit, then a more approximate method may be appropriate than where the estimated VBI is very close to the Shortfall Limit;
- (d) the risk and implications of future short term experience causing a material deterioration in the funding level in the period until the Interim Investigation is completed and any actions that may be taken to mitigate such risks and any associated adverse implications;
- (e) the SPS 160 requirement that the Interim Investigation be carried out as soon as practicable; and

- (f) the SPS 160 requirements regarding the timing of the report (see Section 6.4 of this Practice Guideline).

6.2.2 For some DB Funds, it may be feasible to obtain reliable asset and Vested Benefit information at a 'current' date that would be a suitable Interim Investigation Date. In many other cases, it is likely to be sufficiently accurate to use a 'roll forward' method, using the latest available reliable data to prepare suitably accurate estimates of the assets, Vested Benefits and the VBI at the chosen Interim Investigation Date. It is understood that the wording of SPS 160 has been specifically designed to provide such flexibility.

6.2.3 It is preferable that the Interim Investigation Date be on or after the effective date at which the Trustee is concerned the Shortfall Limit may have been breached.

6.2.4 Furthermore, as paragraph 30(b) of SPS 160 refers to an Interim Investigation finding that the DB Fund **is** in a UFP and **is** in breach of its Shortfall Limit, the RSE Actuary will also need to take account of subsequent events from the Interim Investigation Date up to the date of the report. For example, a DB Fund could be in breach of its Shortfall Limit at the Interim Investigation Date but, due to subsequent favourable investment experience, the estimated VBI could be above the Shortfall Limit at the report date. In such a case, approaches that may be appropriate to consider include:

- (a) the Interim Investigation Date could be moved to a later date by which the estimated VBI could be above the Shortfall Limit, in which case the report would need to include an estimate of the Vested Benefits and assets at that date; or
- (b) if the original Interim Investigation Date is retained, inclusion in the report of the estimated VBI at a later date at which it exceeds the Shortfall Limit.

6.3 Contents of report

6.3.1 The length and content of an Interim Investigation report is expected to vary significantly depending on the circumstances and the outcome – for example, if it is determined that the DB Fund is not in breach of its Shortfall Limit, the report could be quite brief.

6.3.2 Generally, it is expected that the Member would consider including the following matters in the report:

- (a) member and asset data used;
- (b) methodology and assumptions;
- (c) any limitations arising from the data/ methodology /assumptions used;
- (d) estimates of the value of the assets and Vested Benefits (required by SPS 160) – it is acceptable for these to relate only to defined benefits; that is, the estimated value

of the defined benefit assets (Net Asset Value determined consistently with PS 404) and an estimate of Vested Benefits at the Interim Investigation Date;

- (e) findings, including the estimated VBI and whether the DB Fund was in breach of its Shortfall Limit at the Interim Investigation Date and/or is in breach of its Shortfall Limit at the report date (required by SPS 160);
- (f) comments on the consistency of the Interim Investigation results with the results of the last Actuarial Investigation (or financial position update prepared by a Member, if applicable) and known subsequent experience. A full experience analysis is not required but if there is a major unexplained discrepancy in the actual position versus the previous investigation projections adjusted for known experience (or the most recent financial position update prepared by a Member, if applicable), then the Member should use their judgment on whether further work is necessary before the results can be accepted as suitable for the purpose;
- (g) recommendations:
 - i. if the DB Fund is in breach of its Shortfall Limit (at the report date), typical practice is for the report to include contribution program recommendations for the Restoration Plan. Unless already provided or the DB Fund is technically insolvent, either the report will need to include the statements required by paragraph 31 of SPS 160 or they will need to be provided within 15 days of the report date;
 - ii. if the DB Fund is not in breach of its Shortfall Limit (at the report date), it is expected that the Member would still consider whether any recommended action is warranted – for example changes in respect of employer contributions, investments, crediting rates/unit prices, the monitoring process and items to monitor (may include the level and type of benefit payments);
- (h) in either case in paragraph (g), while SPS 160 does not require the RSE Actuary to consider the appropriateness of the current Shortfall Limit as part of an Interim Investigation, if the Member considers that the Shortfall Limit should be reviewed, it is expected that an appropriate recommendation would be made; and
- (i) subsequent events – either that:
 - i. the Member is not aware of any subsequent events from the investigation date up to the date of the report that would affect the findings or recommendations of the report; or
 - ii. certain specified subsequent events have been taken into account and the Member is not aware of any other subsequent events that would affect the findings or recommendations of the report.

6.4 Timing of Report

- 6.4.1 Where an Interim Investigation is being completed, paragraph 28 of SPS 160 requires that the report must be obtained by the Trustee as soon as practicable but in any event by three months after the later of the valuation date (Interim Investigation Date) and the date the Trustee determined that an Interim Investigation was required. Paragraph 15 of SPG 160 adds that, if the valuation date is prior to the date that the Trustee determined that an Interim Investigation was required, APRA expects the Interim Investigation report to be completed within six months of the valuation date.
- 6.4.2 To illustrate the requirements of paragraph 28 of SPS 160, say that the Trustee's estimate of the VBI at 31 March 2024 indicated that the DB Fund may be in breach of its Shortfall Limit. The Trustee (or its delegate for this purpose) is provided with the estimated 31 March 2024 VBI on 28 April 2024. Assuming an Interim Investigation is triggered:
- (a) if the Interim Investigation date is set at 31 March 2024, the latest date for the report would be 28 July 2024, being 3 months after the date of 28 April 2024 on which the Trustee determined that an Interim Investigation was required under paragraph 17 of SPS 160; or
 - (b) if the Interim Investigation date is set at 1 July 2024, the latest date for the report would be 30 September 2024, being 3 months after the investigation date.
- 6.4.3 The 'no later than six months from the valuation date' expectation referred to in paragraph 15(b) of SPG 160 is not in SPS 160. This may create a potential problem where, say, a DB Fund breaches its Shortfall Limit in November and the most timely and efficient approach is to use the prior 1 July data for the Interim Investigation, with the projections and assessment of whether or not the Shortfall Limit has been breached taking into account material post 1 July experience. To comply with the guidance, the Member would not be able to use 1 July as the valuation date unless the report is done by 31 December, which may be unachievable.
- 6.4.4 However, as noted in Section 6.2.3 of this Practice Guideline, in practice it seems preferable that the Interim Investigation Date be a date on or after the date at which the Trustee determined that an Interim Investigation was required, or at least on or after the effective date at which the Trustee is concerned the Shortfall Limit may have been breached. In the illustration in Section 6.4.3, the Interim Investigation Date could be set at (for example) 30 November with the Member using a roll forward of 1 July data to make a reasonable estimate of assets and Vested Benefits at the Interim Investigation Date. In this case, the report would be required by the end of February.
- 6.4.5 If the Member considers (at any point in the process) that it will not be possible to provide the report by the required date, then it would be appropriate for the Member to raise the matter with the Trustee and discuss the reasons and the options available. Options that would enable the SPS 160 deadline to be met may include: applying to

APRA for an extension of the period; a change to a later valuation date; earlier provision of data; or a change to the data requirements and methodology.

7 RESTORATION PLANS

7.1 Actuarial Management

7.1.1 If a Member conducting an Actuarial Investigation or an Interim Investigation finds that a DB Fund is in a UFP or likely to become Unsatisfactory, unless a Restoration Plan is in place or the DB Fund has been declared technically insolvent, then the Member must take certain actions specified in paragraph 31 of SPS 160.

7.1.2 Paragraph 31 of SPS 160 requires:

"31. An RSE actuary must, in the situations identified in paragraph 30:

(a) prepare a statement that, at a minimum:

(i) describes the recommended actions to be taken to address the financial position; and

(ii) contains a recommendation, or sets a date by which a recommendation will be made, in respect of a contribution rate or level that, on reasonable expectations, will restore the fund to, and maintain it in, a satisfactory financial position, within a time period that is reasonable in the circumstances of the fund but which must not exceed three years from the valuation date, or, in the case of an interim investigation, the later of the valuation date and the date the RSE licensee determined that an interim investigation was required under paragraph 17; and

(b) provide the statement to the RSE licensee as soon as practicable and, in any event, within 15 business days of making a finding, in the actuarial report of the investigation, that the financial position is to be treated as unsatisfactory, or is likely to become unsatisfactory or that the shortfall limit has been breached."

7.1.3 When the Trustee receives the statement from an RSE Actuary required by paragraph 31 of SPS 160, paragraph 32 requires the Trustee to take specified actions. These include appointing an RSE Actuary to provide advice to the Trustee in regard to actuarial management during the period in which the DB Fund is in a UFP, including advice as to whether, under the governing rules of the DB Fund, there can be any reduction to the amount of any benefit payments from the DB Fund, or deferral of payment of any part of the benefit during the period. Actuarial management is not defined.

7.1.4 The Trustee is also required to set out a Restoration Plan to return the DB Fund to an SFP. The Restoration Plan may be developed in consultation with the employer-sponsor and the RSE Actuary. The Restoration Plan must be approved by the Board within three

months of receiving the statement (under paragraph 31 of SPS 160) from the RSE Actuary.

- 7.1.5 In the context of a UFP, 'actuarial management' is considered to include the process by which the Member works with the Board to monitor and review the progress of the Restoration Plan in accordance with paragraph 33(d) of SPS 160, but could also include advice relating to the other aspects listed in paragraph 33 in respect to the Restoration Plan (that is, contributions, investment strategy and benefit payments), as well as other matters which impact (or may impact) on the DB Fund's financial position, such as crediting rates/unit prices (where applicable) and the DB Fund's insurance strategy or arrangements.
- 7.1.6 Another matter which may be relevant is whether there is a need for a review of the Shortfall Limit after the DB Fund has returned to an SFP, or whether the current Shortfall Limit is still considered appropriate.
- 7.1.7 The following comments are provided to assist Members in formulating advice relating to the treatment of benefit payments during a UFP as required by paragraph 32(c) of SPS 160. This requires the RSE Actuary to give advice "including advice as to whether, under the governing rules of the DB Fund, there can be any reduction in the amounts of any benefit payments ... or deferral of payment of any part of the benefit ...".
- (a) The Member would appear to be required to interpret "the governing rules of the fund" in regard to reduction or deferral of benefit payments.
 - (b) A "reduction" in benefits would typically not be permitted except in specifically defined circumstances, for example fund termination or cessation of employer contributions. Where the Member is of the view that the "reduction" is (or may be) permitted under the DB Fund's governing rules in the circumstances of the current UFP, it would generally be appropriate to seek legal advice to confirm the position and to consider the requirements of the SIS Act and SIS Regulations. If reductions are recommended, legal advice would also be appropriate to assess from a legal viewpoint the suitability of the proposed process for determining and applying reductions. The Member could reasonably expect that the Trustee obtains this legal advice.
 - (c) While SIS Regulation 9.19(4) gives the RSE Actuary power to restrict benefit payments from a technically insolvent fund, there is no corresponding power under the SIS Act for the RSE Actuary to restrict benefit payments from a DB Fund which is in a UFP but not technically insolvent.
 - (d) The Trustee of an ongoing DB Fund is more likely to consider the "deferral of payment of any part of the benefit" provision in paragraph 32(c) of SPS 160. Again, it would generally be appropriate for the Trustee to seek legal advice to confirm whether, and in what circumstances, the DB Fund's governing rules may allow such deferral. Furthermore, clarification may be required from APRA as to the applicability of the 3 day portability rollover requirements under the SIS Act in these circumstances. Whilst defined benefits are exempt from the portability

requirements, it is likely that this exemption would not extend to lump sum defined benefits that have crystallised due to termination of service - and usually these will be the very benefits that the Member would recommend be subject to deferral (in full or part). Hence specific approval may be required from APRA to facilitate any deferral of benefit payments.

- (e) If recommending reduction or deferral of benefit payments, the Member may need to consider the treatment of both accumulation benefits and defined benefits.
- (f) Except for particular DB Funds where short term benefit payments may have a material impact on funding, it may not be considered necessary to reduce or defer benefit payments even where permitted by the Trust Deed if a Restoration Plan is able to be put in place that is expected to return the DB Fund to an SFP.
- (g) Even where short term benefit payments may have a material impact on funding, if the contribution portion of the Restoration Plan builds in a process for identifying whether or not special 'top up contributions' are required from the employer when benefit payments occur, then no "reduction" or "deferral" of benefit payments may be considered necessary. Examples of top-up arrangements that may be considered appropriate and comments on a number of associated considerations are set out below:
 - i. For each benefit payment, the employer is to pay a top up contribution equal to the estimated underfunded portion of the benefit adjusted for tax (for example, top up contribution = benefit amount x (100% - VBI%) / 0.85). The VBI to use in each case would be as recommended by the Member (for example, based on the estimated VBI around the time of the exit or at the end of the previous quarter). (An estimated VBI is prepared on a quarterly basis for APRA reporting purposes.) The top ups could be paid at the time of each exit or, depending on the number of exits and the Trustee's view about the willingness and ability of the employer to meet the top up payments, quarterly in arrears or on such other basis as is considered appropriate by the Trustee.
 - ii. Where the Restoration Plan requires specific additional contributions to be made on a regular basis to restore an SFP, it may be agreed that a top up contribution for an exit would only be required where the aggregate of the additional contributions paid during the Restoration Plan does not exceed the aggregate of a calculation similar to that in the preceding paragraph in respect of all benefit payments made during the period of the Restoration Plan.

This approach is based on the premise that, at least in some cases, it should be acceptable for the regular additional contributions agreed as part of the

Restoration Plan to be regarded as being used first to fund any shortfalls in respect of exits during the restoration period. This approach has the following advantages:

- the employer is more likely to agree to a higher regular additional contribution program as it reduces the likelihood of additional calls being made on the employer (compared with requiring a top up for each exit); and
- it is administratively simpler than requiring specific top ups for each exit.

The main disadvantage is that it can result in a poorer outcome for remaining DB Fund Members should the fund wind up before an SFP has been restored. Hence, in considering this approach, the Trustee's view about the willingness and ability of the employer to meet the restoration plan will be important.

Variations on this approach would include:

- an assessment on the above basis (that is, regular additional contributions versus shortfalls on exits) for each quarter, rather than looking back over the whole prior period of the Restoration Plan; and
- counting a proportion (for example, 50%) of regular additional contributions as being available to fund any shortfalls on exits.

iii. Usually top ups on exit would only relate to defined benefits, but there may be some circumstances where, having regard to the size of the deficit, the likelihood of wind up and relative priorities on wind up, the Member may recommend that the Trustee also consider requiring top ups for accumulation benefit payments.

iv. Additional top up contributions relating to exits - to the extent that they relate to Vested Benefits (refer to the next two points for other examples) - will reduce the deficit and effectively constitute a 'bringing forward' of part of the future regular additional contributions in the Restoration Plan. Hence, it may be considered acceptable for such top up contributions to be offset against future regular additional contributions. For example, if exit payment top up contributions of \$100,000 were required at the end of a quarter and regular additional contributions were \$50,000 per month, then two months of regular additional contributions could be brought forward and paid early to cover the exit payment shortfall, rather than the \$100,000 being paid in addition to the scheduled regular additional contributions.

v. Where there are benefit options or discretions (for example, to receive an early retirement benefit with employer consent between age 55 and 60) which result in exit payments in excess of the Vested Benefit, a special top up contribution may be appropriate equal to the difference in benefit amount, adjusted for tax. Retrenchment benefits may be another example of where this type of special top up contribution may be considered appropriate.

- vi. Another special situation is the potential termination of a DB Fund which has only 1 or 2 remaining DB Fund Members and the employer is keen to ensure that DB Fund assets do not exceed the remaining DB Fund Members' benefits plus fund wind up costs (due to difficulties in recovering any surplus assets after the last defined benefit member terminates). Note that any variation from the requirements of SPS 160 in such situations would require APRA approval.

- (h) Depending on the circumstances, the "deferral" of benefit payments, if permitted under the governing rules and legislation (see comments above), may be considered appropriate until any associated top up contributions are paid. For example, the Trustee may consider it prudent to implement such a deferral of some or all benefit payments (in whole or part) where it has significant concerns about the willingness or ability of the employer sponsor(s) to make the recommended top up contributions.

7.2 Contents of restoration plan

7.2.1 Paragraph 33 of SPS 160 states:

- "33. At a minimum, a restoration plan must outline:
- (a) the RSE licensee's view of the likelihood that contributions will be made as recommended, taking into account the obligations of each employer sponsor under the governing rules of the fund, and the outcome of the RSE licensee's consultation with each employer sponsor;
 - (b) any changes to the investment strategy of the fund determined by the RSE licensee to be necessary;
 - (c) the likely impact on benefit payments during the period of the plan; and
 - (d) the process by which the RSE actuary and the Board will monitor and review progress towards restoration of the fund to a satisfactory financial position."

7.2.2 Paragraph 33 of SPS 160 does not mention including the recommended contribution program but it would usually be a key component of the Restoration Plan. In this respect, it is expected that the Restoration Plan would usually set out:

- (a) the recommended rate(s) and/or amount(s) of employer contributions to be paid during the period of the Restoration Plan;
- (b) the date by which each contribution should be paid;
- (c) whether special top up contributions are or may be required in respect of benefit payments; and
- (d) the process and timing for determining and making adjustments to the contribution

program in response to variations in experience from the assumptions made in setting the initial remediation contribution program.

7.2.3 A Restoration Plan may also include the expected date by which the Restoration Plan is expected to restore a SFP (up to a maximum of three years unless APRA approval for a longer period has been provided);

7.2.4 Sub-paragraph 33(c) of SPS 160 refers to 'the likely impact on benefit payments'. Refer to Section 7.1.7 for comments on consideration of the possible treatment of benefit payments. It is good practice that the treatment determined be set out in the Restoration Plan. It would also seem desirable for the recommended contribution program set out in the Restoration Plan to include:

(a) if, and when, top up contributions would be required on exits (which may differ between types of exit);

(b) how, and when, those top up contributions would be determined; and

(c) by when the top up contributions would be due to be paid.

7.3 Monitoring of payment of contributions

7.3.1 It will be particularly important during a UFP that the Board's process for monitoring that contributions are paid as recommended works effectively and on a timely basis. A reminder process may be appropriate in advance of the latest payment date, particularly if there are additional contributions with a timing different from regular contributions.

7.3.2 It is good practice that the escalation process where contributions remain unpaid at the due date be clear and include notification to the relevant Member, as:

(a) the Member may be required to notify APRA; and

(b) non-payment or late payment may result in lapsing of the funding and solvency certificate and/or a need to review the Restoration Plan.

7.4 Monitoring of financial position/experience

7.4.1 The monitoring process may include an updated estimate of the VBI or simply whether investment experience (and possibly the level of benefit payments) is within an acceptable range specified by the Member.

7.4.2 This monitoring could be done by the Member or by the Board. In the latter case, possible approaches include:

(a) for the Member to define what experience items need to be monitored and what results would require referral to the Member for further actuarial assessment; or

(b) for the results for each quarter to be referred to the Member and the Member to then advise whether any action is required.

7.4.3 Normally, quarterly might be considered an appropriate monitoring frequency.

7.4.4 Trigger points for an additional review within a quarter could be set if considered necessary or appropriate (for example, benefit payments for the quarter to date in excess of \$Y or a fall in the ASX200 of X% or a fall in the ASX200 of X% and benefit payments for the quarter to date in excess of \$Y). This could be a discussion point with the Board and employer - for example, even where no immediate action is considered to be required, the employer may prefer early warning that an event has occurred which may require a review of the restoration program or greater top ups for exits.

7.4.5 Monitoring of the level of benefit payments may be particularly important for small DB Funds. For example, in some funds where a single payment could be material, the Member may wish to be notified of each exit (depending on the level of the VBI) so that the need for any top up contribution can be assessed on a timely basis.

7.4.6 For larger DB Funds, quarterly monitoring of benefit payments may be considered appropriate or it may be sufficient for actuarial advice to be sought only if there are special events which may result in abnormally high levels of benefit payments (such as a retrenchment program).

7.4.7 The DB Fund may return to a SFP during a Restoration Plan. If this occurs the Trustee may choose to end the Restoration Plan. Irrespective of whether the Restoration Plan is ended, and depending upon the financial position of the DB Fund, if advising the Trustee the Member may consider if it is prudent that any additional contributions anticipated by the Restoration Plan are still made.

7.5 Restoration Plan amendments

7.5.1 Paragraph 35 of SPS 160 states:

"During the period that a restoration plan is in effect, and if it appears that the funding position is not likely to be restored by the end of the period, APRA may, at a minimum:

(a) permit a variation to the period in which the funding position is expected to be restored;

(b) require the RSE licensee to seek further actuarial advice; or

(c) vary any reporting requirements imposed under paragraph 34."

7.5.2 Paragraphs 34 to 37 of SPG 160 provide guidance on monitoring and adjustment of a Restoration Plan. A Restoration Plan may end if the funding position returns to a SFP.

7.5.3 Listed below are some considerations that may be relevant in determining when and how the recommended contribution program is to be adjusted:

(a) In some cases, it may suit the employer and Trustee for the contribution program

to be adjusted following each quarterly review. However, in many cases, such frequent adjustments to the level of current contributions are likely to be considered undesirable (and possibly unworkable for some employers) due to budget constraints and/or administrative inefficiency.

- (b) Particularly where the investment strategy has significant exposure to listed growth assets, it should be recognised that fluctuations are expected to occur and that there may be gains in one quarter that are offset by losses in another quarter. As such, the Trustee and employer may agree, for example, that no adjustments will be made unless certain triggers occur, or that once yearly adjustments may be appropriate and practical.
- (c) There is a potential argument that the level of current contributions should only ratchet upwards, as presumably the existing contribution program is affordable for the employer and the objective is to return to a SFP as soon as practicable. On this rationale, positive experience would result in a contraction of the expected restoration period rather than a reduction in the level of current contributions. By contrast, if there was adverse experience resulting in the expectation that the program was likely to fall short of restoring a SFP within 3 years (or a shorter target period adopted), an increase in the level of recommended contributions would be expected.
- (d) However, in practice, there may be cases where the employer is only willing to agree to a Restoration Plan on the basis that positive experience would (at agreed review points) permit a reduction in the level of current contributions rather than a contraction of the expected restoration period. Member should also note that SPG 160 indicates that adjustments may take place in response to over performance as well as under performance (refer paragraph 36 of SPG 160).
- (e) Another possible arrangement would be for the remedial contribution program to be set to target a return to a SFP in a period shorter than 3 years (for example, 2.5 years) with agreement that the period could extend up to a further 6 months if further adverse experience occurs (refer to the example set out in section 7.5.6 below).

7.5.4 A further consideration is that APRA approval for some adjustments may be required by the Trustee. In particular, paragraph 35 of SPS 160 requires APRA approval of any extension to the duration of a restoration plan.

7.5.5 As noted in Section 7.2.2, in some cases the Restoration Plan may specify the process and timing for determining and making adjustments to the contribution program in response to variations in experience from the assumptions made in setting the initial remedial contribution program. Where an adjustment to the contribution program is in accordance with the Restoration Plan previously submitted to APRA (including any

variations to that plan that were required or permitted by APRA), it is understood that the adjustment would not require APRA approval.

- 7.5.6 For example, say the valuation date of the Interim Investigation is 31 December 2022 and the latest end date permitted for the restoration plan under SPS 160 is 31 December 2025. The employer indicates that it is willing to commit to additional contributions of up to \$100,000 per month. The actuary determines that, on reasonable assumptions, additional employer contributions of \$100,000 per month from 1 April 2023 would be expected to restore an SFP by 31 March 2025 (that is, 24 months of additional employer contributions of \$100,000 per month). The employer indicates that, if there is adverse experience, it will not be able to increase the additional contributions paid up to March 2025, but expects to be able to continue making the additional contributions of \$100,000 per month beyond March 2025 if required to restore a SFP. It is therefore agreed that the additional employer contribution component of the Restoration Plan will be additional employer contributions of \$100,000 per month until the earlier of 31 December 2025 and the date that a SFP is restored.
- 7.5.7 If APRA does not seek any variation to this aspect of the Restoration Plan under paragraph 34 of SPS 160, then it is understood that APRA approval under paragraph 35 of SPS 160 would not be required unless the Trustee wished to extend the duration of the Restoration Plan beyond 31 December 2025.
- 7.5.8 If, on the other hand, the Restoration Plan was simply to restore a SFP by additional employer contributions of \$100,000 per month for the 24 months beginning 1 April 2023, it appears that APRA approval under paragraph 35 of SPS 160 would be required to extend the restoration plan beyond 31 March 2025.
- 7.5.9 Note that paragraph 35 of SPS 160 only applies if "it appears that the funding position is not likely to be restored by the end of the period" and hence APRA approval does not appear to be required either to:
- (a) increase the additional employer contributions so that a SFP is restored by March 2025; or
 - (b) cease the additional employer contributions before March 2025 in the event that a SFP is restored earlier than initially expected.
- 7.5.10 However, it is noted that paragraph 37 of SPG 160 indicates that APRA would expect early contact from a Trustee seeking a variation to the duration of the Restoration Plan, or an early end to the Restoration Plan. It would be appropriate to also notify APRA if there is an increase in, or a cessation of, contributions.

End of Practice Guideline 499.09