



**Actuaries
Institute.**

7 April 2026

Retirement Income and Superannuation Division
The Treasury
Langton Cres
Parkes ACT 2600

Email: superannuation@treasury.gov.au

Dear Sir/Madam

Consultation: Building a Stronger and Fairer Super System Act 2026 - Draft Regulations

The Actuaries Institute (Institute) welcomes the opportunity to provide feedback on the draft regulations (Regulations) titled *Building a Stronger and Fairer Super System Act 2026* and Explanatory Statement. These regulations are intended to support implementation of the Division 296 Tax changes.

The Institute is the peak professional body for actuaries in Australia. Our members work in a wide range of fields including insurance, superannuation, investments and retirement incomes, banking, enterprise risk management, data science and AI, climate change impacts and government services. Our members have had significant involvement in the development and management of superannuation in Australia, and work across APRA regulated funds, Self-Managed Superannuation Funds (SMSFs) and public sector funds.

The Institute has a longstanding commitment to contribute to public policy discussion where our members have relevant expertise. The comments made in this submission are guided by the Institute's '[Public Policy Principles](#)' that any policy measures or changes should promote public wellbeing, consider potential impacts on equity, be evidence-based and support effectively regulated systems.

The Building a Stronger and Fairer Super System package introduces an additional 15 per cent tax on the realised earnings on superannuation balances that exceed \$3 million plus a further 10 per cent tax on the realised earnings on superannuation balances that exceed \$10 million. It sees the insertion of a new Division 296 within the *Income Tax Assessment Act 1997* (Division 296 Tax).

Previous submissions on Regulations

As we outlined in our previous submission to Treasury on an earlier draft of the Regulations (refer to our [26 April 2024](#) submission), the Institute broadly supports the approach proposed by Government to calculating the Division 296 Tax for defined benefit (DB) interests.

We acknowledge and welcome the Government's consideration of our earlier comments, which have been reflected in the following areas:

- applying the Division 296 Tax to realised earnings only;

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- the indexation of large superannuation balance thresholds;
- treating any self-insured components in DB funds as contributions in the Division 296 earnings formula so that DB members are not unduly disadvantaged;
- raising the threshold for which DB interests can be valued using the vested benefit method to be 50% of the first large superannuation balance threshold of \$3m, equating to the proposed \$1.5 million threshold;
- clearer guidance on the circumstances in which the alternative valuation method may be used, by prescribing that the vested benefit method is to be used if the trustee did not use a method to determine the value of the interest just before 1 July 2026;
- that a single set of unisex pensioner mortality rates be adopted based on male mortality rates;
- that decrements consider the treatment of other retirement ages different from age 65, reflected in the update of the two voluntary exit rate tables for when the normal retirement age of the funds is 62 years or younger; and
- grandfathering protection from new entrant rate (NER) increases due to changes resulting from a change to Commonwealth law and the approval, or repeal of an approval, under section 62 of the Family Law (Superannuation) Regulations 2025.

General comments on Regulations

Recognising that any prescribed approach would not be fair to all individuals under all circumstances, we believe the Regulations have in general struck an appropriate balance.

The Institute supports the approach to rely on an actuary's certificate for SMSFs for attribution of Division 296 earnings and plans to develop professional guidance for members on a reasonable, practical approach to the calculations. This guidance is intended to address appropriate use of fund financial statements, treatment of draft versus final accounts, calculation of averages and application of actuarial judgement, with a focus on supporting consistent practice while maintaining the integrity of Division 296 outcomes.

In the remainder of this submission, we provide some technical comments on the Regulations for consideration as they relate to DB arrangements and DB interests in SMSFs. These apply to areas where the drafting or approach could better align with our understanding of the policy intent while reducing complexity and associated compliance costs. We summarise these below, with more detail in the Attachment.

DB Arrangements

Use of Vested Benefit Method: The Institute supports the proposal to adopt a simplified calculation to use the Vested Benefit Method (VBM) for certain DB interests applicable to members considered highly unlikely to incur Division 296 Tax. It appears that the current proposal, as written, may be interpreted to exclude a DB member who can access an account-based pension in the fund on retirement from being valued using the VBM. Assuming this is unintentional, we recommend this be clarified in the Regulations or Explanatory Statement.

Use of Alternative Valuation Method: The Institute supports the additional flexibility for a superannuation actuary to issue a certificate to cover an alternative valuation method (AVM). This will enable funds in which the vested benefits are sufficiently close to the Family Law value to minimise administration costs, as well as aligning to information already provided to members. However, the current proposal, as written, may be overly restrictive given the calculation of many components of Family Law values use factors that result in cohorts of members being outside the 90% to 110% range (for example, younger members). We recommend the actuarial certificates be issued to a specified benefit category on

a material coverage basis, and that an alternative condition be permitted which allows an AVM where the vested benefit interest is less than 50% of the large superannuation balance threshold.

Member communication concerns: The Institute recommends the Government supports trustees with communication to fund members that explains the difference between the information currently received (such as through benefit statements) and the values used in calculating components of the Total Superannuation Balance (TSB), particularly members covered by a Family Law value calculation.

Adjustments to Family Law values for Division 296: The Institute supports the adjustments to the base Family Law (Superannuation) Regulations 2025 calculation of Family Law values, namely the assumption of reversionary status that no current nor future spouse exists, which ensures interest is not inflated to take account of the value of a reversionary pension. We recommend that guarantee periods for lifetime pensions and annuities be treated as nil to align with the principle set out for reversionary status and to reduce associated costs in separately identifying and valuing benefits with and without guarantee periods.

New notional taxed contributions parameters: The Institute recommends updating the commencement of the new valuation parameters for notional taxed contributions to 1 July 2027 to allow sufficient time to issue new certificates and update relevant supporting material.

SMSF interests

We recommend the following simplifications to reduce administrative effort and cost for SMSF trustees and advisers and ensure equitable outcomes while preserving Division 296 earnings and tax aligned with the current intent of the Regulations.

Per-member basis for attribution: We recommend the actuary's certificate determines attribution for account-based interests on a per-member basis by aggregating each member's account-based pension interests (excluding DB interests).

Use of attribution proportion: We recommend that the actuary's certificate also permit certification of an attribution proportion (percentage) for relevant member interests, rather than requiring attributed dollar amounts.

Use average value of fund balance for attribution proportion calculation: We recommend that where a fund has both account-based interests and a DB interest supported by reserves, the proportion be based on the average value of relevant interests relative to the average total value of the fund including reserves supporting DB pensions.

Legacy DB pension interests: We recommend a simple mechanism is provided to enable calculation of the Family Law value of the DB interest for the small number of SMSFs which fail to align precisely with valuation factors available in the Family Law (Superannuation) Regulations.

Deferred Superannuation Income Streams

TSB of a deferred superannuation income stream: We recommend a modified calculation for the TSB of a deferred superannuation income stream to avoid an overstatement of the TSB during the retirement phase. This would enable a simple and fair treatment of deferred superannuation income streams for Division 296 purposes in line with the other regulations.

If you would like to discuss any aspect of this submission, please contact the Institute via (02) 9239 6100 or public_policy@actuaries.asn.au.

Yours sincerely

(Signed)

Tim Jenkins

Chair, Superannuation and Investments Practice Committee

Attachment: Specific comments on Regulations

Defined Benefit Arrangements

Proposed vested benefit method conditions

In our submission on the previous draft of the Regulations dated 26 April 2024 (April 2024 submission), we commented on the proposed conditions for the use of the vested benefit method for valuing certain DB interests. We note that changes were made in the revised Regulations in response to these comments and we welcome those changes.

However, we are uncertain as to the workings of new paragraph 307-230A.08(1)(a)(ii). It appears to be excluding from the vested benefit method any DB member who has the ability, while still in the growth phase (for example, by way of category transfer), to access a benefit design that includes an income stream. We assume this is to minimise the risk of material under-valuation of the benefit compared to the Family Law value. However, in our view it may also be possible to interpret the regulation as excluding a DB member who can access an account-based pension in the fund on retirement, or a transition to retirement account-based income stream once they reach their preservation age.

Recommendation: If the intention is not to exclude these two categories of members, the Institute recommends this be clarified in the Explanatory Statement, including by way of example. We do not expect that this change would affect the potential revenue collected, as the method would apply to DB vested benefits totals less than 50% of the large superannuation balance threshold (\$1.5 million). Under the current interpretation, it is expected, however, to increase compliance and administration costs if the simplified method is largely unable to be used.

It is also unclear to us how section 307-230A.08 (1)(a)(ii) and (3)(b) could occur simultaneously. The first subsection makes it a requirement that Section 307-230A.08 applies where the superannuation interest can never support a superannuation income stream and cannot cease in order to commence a superannuation income stream. However, the second subsection references the value under the vested benefits total should the individual become entitled to a superannuation income stream that was a SIS or RSA pension and was supported by the superannuation interest.

Recommendation: The Institute recommends that this be clarified in the Regulations or Explanatory Statement to assist actuaries to interpret the Regulations.

Alternative valuation methods

We note the proposal for alternative valuation methods (AVMs) where a superannuation actuary may issue a certificate if the actuary is requested to do so by the fund trustee. We continue to be supportive of the proposal intended to provide flexibility for trustees to adopt a valuation method that can reduce the costs of complying and administering the Division 296 Tax.

We welcome the clarifications made to the alternative valuation method in regulation 307-230A.06 in response to the concerns raised in our April 2024 submission. We note that under this method as now proposed, the vested benefit value of the interest can be certified as the alternative valuation method where the actuary is able to certify that the vested benefit value would be between 90% and 110% of the Family Law value of the interests being certified. This would appear to allow the use of the vested benefit value under actuarial certification even in funds where the DB member is able to convert their DB to an account-based income stream, due to the risk of material under-valuation of the benefit being excluded.

Under draft subsection 307-230A.06:

- 307-230A.06(2) states the interest to be all superannuation interests in the fund, or all superannuation interests in the fund of members who belong to a specified benefit category; and

- 307-230A.06(3) states the specific method needs to meet the requirements that the value determined by the interest would be between 90% and 110% of the Family Law value of the interest.

We expect that the current criteria may mean, in practice, the constraints are difficult to satisfy. For example, under Schedule 3 Part 2 Clause 4(2) of the Family Law (Superannuation) Regulation 2025, the lump sum valuation factor for members with 7 or more years until retirement are less than 90%. In many cases, this means younger members will have a Family Law value that is less than 90% of the vested benefit (and conversely, a vested benefit greater than 110% (approximately the inverse of 90%) of the Family Law value as required under 307-230A.06(3)). Given the certificate would have to apply to at least all members in a specified benefit category, as per 307-230A.06(2), it is unlikely that certificates will be utilised for benefit categories.

In addition, the certification that the specific method meets the requirements means trustees would need to calculate the Family Law values in any case. It is unlikely to improve administration impost.

Recommendation: The Institute recommends that the Regulations be updated or actuarial guidance be permitted to allow the use an alternative valuation method if the material majority (e.g. 95%) of superannuation interests for a specified benefit category either:

- has a value that lies between 90% and 110% of the Family Law value at the test time; or
- has a vested benefit interest with value that is larger than the Family Law value and has a vested benefit interest of 50% or less of the large superannuation balance threshold at the test time.

This would enable scale benefits of issuing an alternative valuation certificate and minimise the chance that a trustee would change valuation methodologies for individual members through maintenance of one methodology over time.

Member communications of TSB

The vested benefit amount is currently used for the purposes of ATO reporting of a member's TSB. This aligns to the communications received from the superannuation fund. The proposed changes to TSB require Family Law values to be calculated for members with DB and certain retirement interests.

Family Law values are inherently complex to calculate and are currently not disclosed to members. Given the shift to Family Law Values for some DB members and impact on TSBs, there are implications for understanding the value as it relates to a number of other determinations, including:

- carry-forward of unused concessional contributions;
- non-concessional contributions eligibility and the bring-forward of non-concessional contributions cap;
- Government co-contribution; and
- spouse contribution tax offset.

There are also implications for members who meet the criteria to use vested benefits (as defined in 307-230A.08 of the Regulations) who subsequently exceed the proposed \$1.5 million threshold and are transitioned to a new valuation methodology. It is important to inform members of these changes to avoid potential confusion and to support sound financial decision making.

Recommendation: The Institute recommends that the Government provide guidance and support to Trustees in communication of the Family law value, such as providing TSB via the ATO MyGov records and explanation of the differences between TSB and vested benefits.

Treatment of guarantee periods for life pensions in payment phase

Guarantee periods for life pensions in payment phase, similar to reversionary pensions, provide value only to beneficiaries, not to the member subject to Division 296. On the member's death within the guarantee period, the benefits payable for the remaining period would either transfer to a reversionary beneficiary as an income stream and be captured in the beneficiary's TSB as a fixed term annuity, or exit the superannuation system entirely.

Recommendation: The Institute recommends that guarantee periods be treated as nil for the purposes of calculating a TSB for life pensions in payment phase. This aligns to the rationale for reversionary pensions, where the value of the interest is not inflated to take account of the value of a reversionary benefit. Valuing guarantee periods at nil would also streamline administration and calculation of life pensions in payment phase Family Law values, removing the need to separately identify and value life pension benefits with guarantee periods versus those without.

Valuation parameters commencement date

The Regulations, under 1000-8.05, note that for both the purposes of working out notional taxed contributions and DB contributions, a start date of 1 July 2026 will be in-force. The Institute is concerned that it may not be feasible to issue the actuarial certificates and update appropriate communication materials before 1 July 2026.

Recommendation: The Institute recommends that the commencement date of the new valuation parameters be updated to 1 July 2027.

Review of the reduction factor

The DB Division 296 Reduction Factor recommendation by the Australian Government Actuary (AGA) has been calculated based on several assumptions (including both financial and demographic) that are expected to change over time. While we note the assumptions used by the AGA are well thought through and explained well in the AGA letter, circumstances can change. We acknowledge that the AGA letter accompanying the Regulations states "*it is intended to be set and likely remain unchanged over a long period*". However, we believe it would be preferable that the Regulations include a specified timeframe to ensure periodic review.

Recommendation: The Institute recommends that the Regulations include a timeframe in which the current reduction factor remains in-force, subjecting the factor to reviews on an on-going basis. Any future changes to the Family Law reduction factors would need to ensure start of year and end of year TSB values are calculated on an aligned basis.

Technical correction to Explanatory Statement

We have noticed a potential inconsistency in the flow chart for *Interests that are in retirement phase* in the Explanatory Statement (page 28).

Recommendation: The Institute recommends that the reference to certain innovative income streams (307-230A.08 as written) should reference 307-230A.09.

Self-Managed Superannuation Funds

Upon review of the Regulations, we have four areas of consideration for Treasury which we believe would reduce complexity and cost of implementation of the new requirements for the SMSF sector.

Attribute Division 296 earnings (for account-based interests) at the member level

The Regulations require the actuary to attribute earnings at an interest-by-interest level. We propose the process can be simplified and costs minimised if all account-based interests for a *member* are combined (accumulation, account-based pension and market-linked pension accounts) and the actuary is required to attribute earnings at a member level, for all a member's interests that are not DB interests. This will still leave DB interests as a separate calculation for Division 296 earnings.

In our view, combining each member's interests in this way will result in an identical Division 296 earnings and tax outcome for a member compared to calculating Division 296 earnings per interest for a member and summing the results.

This approach would also be consistent with current calculations for an actuary's certificate under Section 295-390 of the ITAA which involves a similar proportion of averages calculation for an SMSF where "like" interests are grouped together.

Recommendation: To implement this suggestion subsection (1) of section 296-65.03 could be reworded as follows:

- (1) For the purposes of subsection 296-65(5) of the Act, the amount attributable to a member's superannuation interests (the **relevant interests**) in a small superannuation fund for a year must be determined in accordance with this section for an income year (the **fund year**) of the fund.

For example, a member with several account-based pensions would have a single "average" calculated for the combination of all account-based pension accounts.

Division 296 earnings attribution proportion to be determined by the actuary's certificate

Subsection (5) states the amount attributable to a superannuation interest is to be determined wholly by reference to an actuary's certificate unless exceptions apply. We welcome the exceptions stated in this subsection and agree these are reasonable. To reduce cost and time for fund trustees and accountants in obtaining the actuary's certificate we propose a change to enable the certificate to be obtained as part of completing the fund accounts.

Many trustees would have a view of which members may be in-scope for Division 296 and it would be efficient to enable the trustee to choose to obtain a Division 296 actuary's certificate during the fund accounts preparation phase if desired (which is also when an actuary's certificate is being obtained for the purposes of calculating exempt current pension income).

The Division 296 fund earnings to be used in the calculation at subsection (2) will be based on the fund accounts for the fund year which is the responsibility of the fund's tax agent or fund trustee and audited by the fund auditor. Division 296 earnings cannot be determined until after the fund accounts have been completed for the fund year.

To facilitate the provision of the actuary's certificate prior to the fund accounts being completed the actuary's certificate could certify the attribution proportion for each fund member as:

$$\frac{\textit{Average total superannuation balance value of the relevant interests}}{\textit{Average sum of the total superannuation balance values of all of the superannuation interests in the fund}}$$

This calculation can, in our view, be completed based on draft accounts like the approach used for the Section 295.390 actuary's certificate. The proportions certified in the actuary's certificate for each member

could then be applied to the Division 296 fund earnings by the trustee or fund tax agent to determine the amount attributable to each member as the Division 296 earnings amount to report to the ATO for an in-scope member.

Recommendation: To provide this flexibility subsection (5) could be reworded as follows:

(5) The amount attributable to the superannuation interests must be determined wholly by reference to the attribution proportion in an actuary's certificate, unless:

and subsection (2) as:

Division 296 fund earnings for the fund for the fund year
× *Actuarial attribution proportion*

and

Actuarial attribution proportion =

Average total superannuation balance value of the relevant interests

*Average sum of the total superannuation balance values of all
of the superannuation interests in the fund*

The actuary's certificate would provide *percentages* rather than *dollar amounts*. The fund's tax agent or trustee are then able to calculate the amount of attributable earnings for each member by reference to the Division 296 earnings for the fund year and the actuary's certificate.

Use average value of fund balance for attribution proportion calculation

For account-based interests in an SMSF the TSB of an interest will be the market value of that interest. For a fund with only account-based interests the TSB of all interests in the fund will generally be the total value of the fund. For a DB interest in an SMSF, the TSB value of that DB interest will not be the same as the value of the assets in reserve supporting that interest. Generally, the assets of the fund supporting the pension liability will be higher than the TSB value of the DB pension using a Family Law value valuation.

Where an actuary's certificate is obtained for a fund with both a DB interest and account-based interests, to certify the proportion of Division 296 earnings attributable to the fund's account-based interests using the TSB value for the DB pension can lead to inequitable attribution of earnings.

For example, in a two member SMSF where one member has a DB pension (\$1m Family Law value but \$2m reserve supporting that interest) and the other member has a \$4m accumulation account, the proportion of Division 296 fund earnings attributed to the accumulation account would be approximately 80% (\$4m ÷ \$5m), however only 67% (\$4m ÷ \$6m) of the fund "belongs" to this member.

Recommendation: We propose that the proportion of earnings attributed to each interest should be based on the average value of that interest relative to the average value of the *fund as a whole* rather than the *TSB values of all interests*.

To provide this flexibility subsection (2) could be reworded as follows:

Average total superannuation balance value of the relevant interests

Average total value of the fund

Enable a TSB value for DB pension interests with indexation rates not allowed for in the Family Law Regulations

Very few SMSFs have a DB pension interest, and the number is rapidly decreasing due to the five-year exit measure introduced from 7 December 2024 and from ageing members passing away. For those that remain the TSB value of these interests in an SMSF are to be determined under the Regulations by reference to the Family Law value of the pension.

However, the terms and conditions for a small number of DB pensions in an SMSF fail to align with valuation factors available in the Family Law (Superannuation) Regulations. For example, they may include:

- indexation at a higher rate than the maximum for which factors are provided (5%); or
- a flexible indexation rate; or
- indexation that is entirely discretionary.

Recommendation: We recommend a simple mechanism is provided to enable calculation of the Family Law value of the DB interest for the small number of funds in this position, which in our estimate is likely to be less than 100 SMSFs. These will all be superannuation interests in retirement phase.

For example, the Regulations could provide scope when valuing a DB pension interest for TSB purposes to adopt an approach consistent with the intent or actuarial basis underlying the Family Law Regulations such as:

- funds with variable or discretionary indexation to assume an indexation rate in line with the average indexation over the prior three years;
- funds with indexation above 5% to use the 5% indexation factors; and
- a basis consistent with the intent of the Family Law Regulations deemed appropriate for the DB pension interest for TSB valuation purposes by an actuary.

Given the very small number of funds with DB pensions with pension terms which do not align with the current Family Law factors, we believe simplicity rather than perfection is key.

Deferred Superannuation Income Streams

TSB of a deferred superannuation income stream

The calculation for the TSB of a deferred superannuation income stream is defined in Reg 307.205.02C of the *Income Tax Assessment (1997 Act) Regulations 2021* as the sum of each amount of consideration paid for the interest for the income stream, and that amount's associated notional earnings.

With the prior context that the TSB in the retirement phase was set as the value on the retirement phase start day, this was appropriate. However, in the context of the TSB for the calculation of the Division 296 tax liability, this compounding is no longer appropriate. As defined in Reg 1.03 of the Superannuation Industry (Supervision) Regulations 1994, a deferred superannuation income stream maintains the classification even after payments have commenced. Under the draft regulations, the TSB for any deferred superannuation income stream, as determined in Reg 307.205.02C, continues to be compounded even through the payment phase. Over time, this will lead to an increasing divergence from the capital available from a deferred superannuation income stream resulting in an overstatement of the TSB.

Recommendation: The simplest way to resolve this issue would be to enable these deferred superannuation income streams to use the maximum commutation amount as the TSB once they are in the retirement phase. The retirement phase start day is the appropriate switch point as the access amount used to determine the maximum commutation amount is aligned to the TSB at that time under 307.205.02C. This could be done by amending 307-205A.09(b) and adding (c) as:

(b) sections 307.205.02D and 307.205.02E of this instrument do not apply to the interest; and

(c) if section 307.205.02C of this instrument applies, then the interest is in the retirement phase under s307.80 of the Income Tax Assessment Act 1997.

This would enable a simple and fair treatment of deferred superannuation income streams for Division 296 purposes in line with the other regulations.