Practice Guideline 499.03 Prudential Reporting under the SIS Act June 2026

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1. Introduction

1.1. Application

1.1.1. The purpose of this Practice Guideline is to assist Members in:

(a) understanding the requirements of sections 129, 130, 130A and 130C of the SIS Act in relation to Entities; and

(b) understanding the extent to which their professional obligations and responsibilities in relation to prudential reporting may extend beyond the legislative requirements referred to in (a).

1.1.2. This Practice Guideline applies to a Fund Actuary:

(a) performing actuarial functions under the SIS Act, the SIS Regulations, Prudential Standards or the Financial Sector (Collection of Data) Act 2001 (Cth) in respect of an Entity; and

(b) (so far as is relevant, performing any functions under the legislative framework referred to in part (a) of this clause, in the course of which they obtain sufficient information to enable them to assess the financial position of the Entity (refer clause 5.3).

Section 13 of this Practice Guideline also comments on the responsibilities of actuaries advising public sector funds.

1.1.3. In particular, this Practice Guideline deals with the obligations of Fund Actuaries to notify an Entity's Trustee and/or the Regulator in certain circumstances in relation to:

(a) the actual or potential non-compliance of an Entity with particular legislative requirements (including Prudential Standards such as SPS 160), in accordance with section 129 of the SIS Act;

(b) the solvency (i.e. unsatisfactory financial position) of an Entity, in accordance with section 130 of the SIS Act;

(c) the provision of information regarding an Entity, or the trustee of an Entity, in accordance with section 130A of the SIS Act; and

(d) a failure to implement actuarial recommendations for an Entity, in accordance with section 130C of the SIS Act.

Note that this Practice Guideline discusses when notification obligations may arise during the course of performing various functions but is not intended to provide guidance on how to perform those functions. Relevant guidance or information may be provided in other Professional Practice Documents, including (but not limited to) Practice Guideline 499.09 Actuarial Requirements of Prudential Standard SPS 160.

1.1.4. This version of the Practice Guideline updates the prior version (issued March 2011) to better reflect current regulatory requirements and to align with the Institute's current Code (effective 1 July 2025). Comments on special considerations for public sector funds have also been added. PG 499.03 (March 2011 version) replaced and updated the guidance previously contained in Guidance Note 460 (Prudential Reporting to the Trustees and the Regulator) which was issued in December 1994.

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 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. Other relevant documents

1.3.1. This Practice Guideline will 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

1.3.2. 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 substitutions of these. Similarly, a reference to a Professional Standard or Practice Guideline includes any modification or replacement of that Professional Standard or Practice Guideline.

1.3.3. 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.

1.3.4. The relevant provisions of the SIS Act and the SIS Regulations discussed in this Practice Guideline leave a number of terms and expressions undefined and thus open to interpretation. There are also inconsistencies in wording between the relevant provisions. In particular, the Institute's interpretation that the obligations referred to in paragraph 1.1.3 apply only to Fund Actuaries (and not to other Members) should not be considered definitive as the interpretation of the relevant provisions may be open to different legal views.

1.3.5. 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.

2. Commencement Date

This Practice Guideline commences on 22 June 2026.

3. Definitions and Interpretation

3.1. In this Practice Guideline

'APRA' means the Australian Prudential Regulation Authority

'Accumulation Fund' has the same meaning as set out in SIS Regulation 1.03

'Defined Benefit Fund' has the same meaning as applies to 'defined benefit fund' for the purposes of the SIS Regulations or SPS 160 (where SPS 160 applies to the Entity), as applicable. The term includes:

(a) any Entity from which one or more Defined Benefit Pensions are paid, where those pensions are not fully backed by annuity contracts or otherwise fully insured; and

(b) a defined benefit sub-fund where so required by the SIS Regulations or SPS 160 (as applicable)

'Defined Benefit Pension' has the same meaning as set out in SIS Regulation 9.04E or SPS 160 (as applicable)

'Fund Actuary' means an RSE Actuary (as defined in the SIS Act) or, in relation to an SMSF, an SMSF Actuary (as defined in the SIS Act).

'Entity' has the same meaning as "superannuation entity" under section 10 of the SIS Act

'FS(CoDA)' means the Financial Sector (Collection of Data) Act 2001 (Cth)

'Financial Accountability Regime' or **'FAR'** means the regime established by the Financial Accountability Regime Act 2023 (Cth)

'Material' means relevant to a decision of an Intended User of the Services. For this purpose, 'Material' does not have the same meaning as in Australian accounting standards

'Prudential Standard' means a Prudential Standard issued by APRA

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

'Regulator' has the same meaning as set out in section 10 of the SIS Act

'RSE' has the same meaning as 'registrable superannuation entity' in section 10 of the SIS Act

'SMSF' has the same meaning as 'self-managed superannuation fund' in section 10 of the SIS Act

'SGA Act' means the Superannuation Guarantee (Administration) Act 1992 (Cth)

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

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

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

'Trustee' has the same meaning as set out in section 10 of the SIS Act

'Unsatisfactory Financial Position' has the same meaning as set out in SIS Regulation 9.04

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

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

4. Legislation

4.1. Sections 129, 130 and 130C of the SIS Act require a Fund Actuary of an Entity, in certain circumstances, to make a written report to the Trustee of the Entity and/or to the Regulator.

4.2. Section 129 of the SIS Act relates to breach reporting and applies to a Fund Actuary of an Entity if:

(a) the Fund Actuary forms the opinion that it is likely that a contravention of the SIS Act, the SIS Regulations, the Prudential Standards, or if the Entity is an RSE, the FS(CoDA), the Financial Accountability Regime or, specified provisions of the Corporations Act 2001 (Cth) may have occurred, may be occurring or may occur in relation to the Entity; and

(b) that opinion was formed in the course of, or in connection with, the performance by the Fund Actuary of actuarial functions in relation to the Entity under the SIS Act, the SIS Regulations, the Prudential Standards or the FS(CoDA),

but does not apply if the Fund Actuary has formed an honest belief that his or her opinion is not relevant to the performance of those functions.

4.3. Section 130 of the SIS Act relates to the financial position of an Entity and applies to a Fund Actuary if:

(a) the Fund Actuary forms the opinion that the financial position of the Entity may be, or may be about to become, unsatisfactory; and

(b) that opinion was formed in the course of, or in connection with, the performance by the Fund Actuary of any of the following functions under the SIS Act, the SIS Regulations, the Prudential Standards the FS(CoDA), Financial Accountability Regime or the specified provisions of the Corporations Act in relation to the Entity:

- actuarial functions; or

- any other functions if, in the course of, or in connection with, the performance of those functions the Fund Actuary obtained sufficient information to assess the financial position of the entity.

In forming an opinion referred to in paragraph 4.3(a) above as to whether the financial position of a Defined Benefit Fund may be about to become unsatisfactory, a Fund Actuary must, under SIS Regulation 9.03(1), consider whether, at the end of the 3 year period immediately following the date at which the Fund Actuary's calculations are done, the value of the assets of the Entity is likely (based on the Fund Actuary's reasonable expectations) to be inadequate to meet the value of the vested benefits of the members of the Defined Benefit Fund. Also refer to the guidance at paragraph 12.3(b) of this Practice Guideline.

4.4. Section 130C of the SIS Act relates to the failure to implement an actuarial recommendation relating to contributions to a Defined Benefit Fund that is an RSE by the employer-sponsor of the Defined Benefit Fund, where a trustee of the Defined Benefit Fund, or an employer-sponsor of the Defined Benefit Fund, was required to implement the recommendation and the recommendation was contained in:

(a) a report from a Fund Actuary obtained under the SIS Regulations or the Prudential Standards or obtained in accordance with a requirement of the SIS Regulations or the Prudential Standards; or

(b) a document prescribed by the Regulations for the purposes of section 130C(1)(a)(iii) of the SIS Act (no such documents have been prescribed as at the date of issue of this Practice Guideline),

but only applies where the Fund Actuary's opinion was formed in the course of, or in connection with, the performance by the Fund Actuary of actuarial functions under the SIS Act, the SIS Regulations, the Prudential Standards or the FS(CoDA).

4.5. Sections 129 and 130C of the SIS Act only apply where the Fund Actuary's opinion was formed in the course of, or in connection with, the performance of the stipulated actuarial functions. Without this qualification, superannuation funds may have been reluctant to use actuaries for functions other than those specifically required by the SIS Act, the SIS Regulations and Prudential Standards. As such a result would have potentially been to the detriment of superannuation funds, this qualification was included. Lists of actuarial functions and related comments are set out in section 5.1 of this Practice Guideline. However, section 130 of the SIS Act (relating to the solvency of an Entity) also applies where the Fund Actuary's opinion was formed in the course of, or in connection with, any other functions if, in the course of, or in connection with, the performance of the functions, the Fund Actuary obtained sufficient information to enable them to assess the financial position of the Entity.

4.6. Section 130A of the SIS Act provides that a Fund Actuary of an Entity may, in certain circumstances, give information regarding the Entity or the Trustee of the Entity to the Regulator. This applies only where:

(a) the information was obtained in the course of, or in connection with, the performance of actuarial functions under the SIS Act, the SIS Regulations, the Prudential Standards, FS(CoDA) or the Corporations Act 2001 (Cth); and

(b) the Fund Actuary considers that giving the information will assist the Regulator in performing its functions under the SIS Act, the SIS Regulations, the Prudential Standards, FAR or FS(CoDA).

4.7. Section 130B of the SIS Act removes the privilege against self-incrimination in respect of compliance with sections 129 and 130 of the Act, however sub-section (2) provides some conditional protection.

4.8. Under sections 129(3A), 130(2A) and 130C(3) of the SIS Act, a Fund Actuary may not have to tell the Regulator and/or Trustee about a matter where the Fund Actuary has been told by another person to whom the relevant section applies (e.g. the Entity's auditor) that the other person has told the Regulator or Trustee about the matter and the Fund Actuary has no reason to disbelieve that other person.

5. Performing an 'Actuarial Function'

5.1. 'Actuarial function'

5.1.1. The SIS Act, the SIS Regulations and the Prudential Standards specify a number of actuarial functions (i.e. functions that must be carried out by an actuary) but a Fund Actuary may also carry out other actuarial functions.

5.1.2. In the case of a Defined Benefit Fund, the actuarial functions specified in the relevant legislation as at the date of this Practice Guideline are:

(a) preparation of a funding and solvency certificate in accordance with SIS Regulation 9.09;

(b) declaration of technical insolvency in accordance with SIS Regulation 9.16;

(c) preparation of a special funding and solvency certificate in accordance with SIS Regulation 9.18;

(d) actuarial management during a period of technical insolvency in accordance with SIS Regulation 9.19;

(e) recommending a course of action in place of winding up a Defined Benefit Fund in accordance with SIS Regulation 9.24;

(f) an actuarial investigation undertaken for an Entity in accordance with SPS 160 paragraphs 14-19 inclusive, which cover:

- regular and initial investigations,
- investigations required by APRA, and
- interim investigations

or, for an SMSF, in accordance with SIS Regulations 9.29 to 9.31 inclusive;

(g) preparation of actuarial advice required in accordance with SPS 160 paragraph 17(b) where the Entity is or may be in breach of its shortfall limit and the next regular actuarial investigation is due to commence within six months;

(h) provision of the report on an actuarial investigation required by APRA, to the Trustee and APRA, in accordance with SPS 160 paragraph 26;

(i) preparation of a statement under SPS 160 paragraph 31(a) and provision of the statement to the Trustee in accordance with SPS 160 paragraph 31(b) (where a restoration plan is required);

(j) providing advice in regard to actuarial management of an Entity in an unsatisfactory financial position under SPS 160 paragraph 32(c);

(k) monitoring of the progress of an Entity towards restoration of a satisfactory financial position in accordance with the monitoring process set out in the restoration plan, in accordance with SPS 160 paragraph 33(d);

(l) providing actuarial oversight of the reserves and self-insurance arrangements of Defined Benefit funds under SPS 160 paragraph 37;

(m) providing an actuarial certificate under section 117 of the SIS Act in relation to a payment to an employer-sponsor;

(n) providing an actuarial certification under Part 12 of the SIS Regulations in relation to pre-1 July 1988 funding credits

(o) providing a dangerous occupation certificate under section 68AAF(2) of the SIS Act; and

(p) preparation of a benefit certificate for the purposes of the SGA Act. While this function does not receive particular mention in the SIS Act and SIS Regulations, the minimum requisite benefits resulting from a benefit certificate are referred to in the SIS Act and, as such, preparation of the benefit certificate is considered to constitute an 'actuarial function'.

5.1.3. In the case of an Accumulation Fund, the specified actuarial functions are:

(a) actuarial management during a period of technical insolvency in accordance with SIS Regulation 9.39;

(b) recommending a course of action in place of winding up an Accumulation Fund in accordance with SIS Regulation 9.44; and

(c) providing an actuarial certificate under section 117 of the SIS Act in relation to a payment to an employer

(d) providing a dangerous occupation certificate under section 68AAF(2) of the SIS Act.

5.1.4. A Member may be a director of a Trustee board and (in that capacity) be a recipient of advice from a Fund Actuary. Whilst such a Member is a part of a Trustee with its own reporting obligations, and has legal obligations as a director of that Trustee, their Trustee director role is not covered by this Practice Guideline. They will not be considered to have undertaken an actuarial function.

5.2. Performance of the actuarial function

5.2.1. For section 129 of the SIS Act to apply, the Fund Actuary must form the opinion (that it is likely that a relevant contravention may have occurred, may be occurring or may occur) in the course of performing one of the actuarial functions described in clauses 5.1.2 or 5.1.4 above. Where a Fund Actuary is performing one of the actuarial functions so described, but has delegated tasks to a person who is not the Fund Actuary performing that function, it is considered that all information available to the delegate must also be available to the Fund Actuary performing the actuarial function. Accordingly, such a delegation would not alter the Fund Actuary's responsibilities under the SIS Act.

5.2.2. Section 129 of the SIS Act is further restricted to situations where the opinion in relation to non-compliance is relevant to the performance of the actuarial function (see section 129(2) of the SIS Act). No statutory action needs to be taken by the Fund Actuary in relation to a breach that is not relevant to the actuarial function being performed.

5.2.3. It is generally accepted that "not relevant to the performance of the actuarial function" would apply where the breach:

(a) does not have a direct or indirect Material impact on the outcome of the actuarial function; or

(b) is not related to the actuarial function.

By way of illustration, assume that a Fund Actuary discovers a breach of the SIS Regulations whilst performing a three yearly regular actuarial investigation for the purpose of SPS160 (or in the case of an SMSF, for the purpose of the SIS Regulations). Whether the contravention needs to be reported depends upon whether it is relevant to the performance of the actuarial function. Whilst a breach may not appear to be relevant to the performance of the actuarial function, a breach that is serious enough to threaten the complying status of an Entity would be relevant to the performance of an actuarial investigation because of the potential impact on the financial position and, as such, would need to be reported (subject to the operation of sections 129(3A), 130(2A) and 130C(3) of the SIS Act).

5.2.4. Sections 130 and 130C of the SIS Act do not include the further restriction described in clause 5.2.2 above.

5.3. Performance of non-actuarial functions (Section 130 obligations)

5.3.1. It is important to note that the provisions of paragraph (1(b) of section 130 of the SIS Act extend the Unsatisfactory Financial Position reporting obligations to circumstances where a Fund Actuary forms the specified opinion in the course of performing any function under the SIS Act or SIS Regulations, the Prudential Standards or FS(CoDA) in relation to an Entity -- not merely an actuarial function – if, in carrying out that function, the Fund Actuary obtains sufficient information to enable the Fund Actuary to assess the financial position of the Entity.

5.3.2. Hence, for example, if a Fund Actuary of an Entity is providing assistance to a Trustee in relation to the Trustee's reporting obligations for the Entity under FS(CoDA), or the Trustee's monitoring obligations for the Entity required by SPS 160, and in the course of this work:

(a) obtains sufficient information to assess the financial position of the Entity, and

(b) forms the opinion that the financial position of the Entity may be, or may be about to become, unsatisfactory

the Fund Actuary's reporting obligations under section 130 would be triggered.

This would include assistance provided by a Fund Actuary to a Trustee in:

- completing its quarterly APRA reporting requirements in regard to defined benefit vested benefits coverage; and/or
- monitoring vested benefits coverage against the Entity's shortfall limit

provided the actuary has sufficient information to allow him or her to form an opinion on the financial position of the Entity. (It is possible that there may be some circumstances where the assistance provided is of a nature whereby an opinion on the financial position of the Entity would not be formed by the actuary: for example, the work undertaken by the actuary may be confined solely to valuing the liability of lifetime pensioners with no asset or other benefit liability information being provided.)

In addition, if such monitoring by a party other than a Fund Actuary triggers a requirement for the Trustee to seek the advice of a Fund Actuary (such as an interim actuarial investigation or advice required under SPS 160 paragraphs 14-19 inclusive) then the performance of that actuarial advice would be considered an actuarial function.

6. Evidence of a Contravention

6.1. Section 129(1) of the SIS Act applies if a Fund Actuary forms an opinion that it is likely that a contravention of the SIS Act, the SIS Regulations, the Prudential Standards, or if the Entity is an RSE, the FS(CoDA), FAR or a relevant provision of the Corporations Act may have occurred, may be occurring or may occur.

6.2. For section 129 of the SIS Act to apply, the Fund Actuary should be satisfied "on the balance of probabilities" that a contravention may have occurred, may be occurring, or may occur.

6.3. In forming the opinion as to whether a contravention "may occur", the Fund Actuary should be satisfied that there is sufficient information to enable a conclusion that, on the balance of probabilities, a contravention may occur in the foreseeable future.

6.4. In relation to a contravention that may have occurred in the past, the fact that such contravention has not been revealed as part of a subsequent audit of an Entity does not change the Fund Actuary's responsibilities under the SIS Act.

7. Opinion on financial position

7.1. Section 130 of the SIS Act applies, in certain circumstances, if a Fund Actuary of an Entity forms the opinion that the financial position of the Entity may be, or may be about to become, unsatisfactory.

7.2. In determining if the financial position of the Entity "may be about to become" unsatisfactory:

(a) for a Defined Benefit Fund, SIS Regulation 9.03(1) requires that the test is whether, on the Fund Actuary's reasonable expectations, the value of the assets of the Entity at the end of the three year period immediately following the date on which the Fund Actuary's calculations are done, is likely to be inadequate to meet the value of the vested benefits; and

(b) for an Accumulation Fund, the legislation does not specify any particular time horizon.

7.3. For the purpose of SIS Regulation 9.03(1), accepted practice is that the Fund Actuary's reasonable expectations are based on best estimate assumptions set in accordance with the requirements of PS 400, including any short term adjustments if appropriate.

7.4. Section 130 of the SIS Act applies to a Fund Actuary when a relevant opinion is formed based on information obtained in the course of performing any function under the SIS Act, the SIS Regulations, the Prudential Standards, or the FS(CoDA), in relation to the Entity (as discussed in clause 5.3 above). Accepted practice is that:

(a) where it is clear to a Fund Actuary from the information received that the financial position may be, or may be about to become, unsatisfactory, then an opinion would have been formed for the purposes of section 130 of the SIS Act;

(b) receiving information, which could be used to undertake calculations to form an opinion regarding the financial position does not require a Fund Actuary to undertake those calculations in order to form such an opinion (unless such calculations are part of undertaking the requested function itself); and

(c) the forming of an opinion might require a three year projection of assets and liabilities. Access to information that would potentially enable such a projection does not require a Fund Actuary to undertake such a projection (again, unless such calculations are already part of undertaking the requested function itself).

7.5. Analysis undertaken in the course of carrying out functions outside the requirements of the SIS Act, the SIS Regulations, the Prudential Standards and the FS(CoDA), (such as Accounting Standard AASB119 calculations for corporate reporting) does not fall within the bounds of section 130 and therefore would not give rise to a legal obligation to report to the Regulator.

7.6. However, Members' attention is also drawn to clause 12.3 of this Practice Guideline, which provides guidelines on circumstances where Members' professional responsibilities may extend further than the specific requirements of section 130.

8. Determination of an Unsatisfactory Financial Position

8.1. Unsatisfactory financial position

8.1.1. For the purposes of section 130 of the SIS Act, an unsatisfactory financial position in relation to an Entity is defined in SIS Regulation 9.04 with the relevant calculations for a Defined Benefit Fund requiring assessments of the values of assets and vested benefits for the Entity.

8.2. Value of assets

8.2.1. In determining the value of assets to be used for the purposes of section 130 of the Act, the Fund Actuary must comply with Professional Standard 404 (Valuation of Superannuation Fund Assets).

8.2.2. Members may note that SIS Regulation 9.04 (which defines an unsatisfactory financial position for the purposes of Section 130 assessments) does not mention any adjustment to the asset value for Operational Risk Financial Requirement (ORFR) assets.

8.2.3. This differs from the explicit references in SPS 160 to deducting ORFRs from assets when making SPS 160 assessments of unsatisfactory financial position. It is also noted that the relevant reporting standards, i.e. SRS 160.0 and SRS 160.1, also require that unsatisfactory financial position and related measures, such as the vested benefits index and the shortfall limit, are to be reported based on assets net of ORFR and consistent with the definitions in SPS 160.

8.2.4. In determining the value of net assets for the purposes of notifications under section 130 of the Act, a practical approach would be to apply the Net Asset definition as used in PS 400, which requires the exclusion of any amount held to meet the ORFR.

8.2.5. Given the size of ORFRs, this difference is unlikely to have any practical impact on the outcome of the determination.

8.3. Vested benefits

Expected practice is for vested benefits to be determined in the manner set out in PS 400. If an alternative approach is used, the Member is expected to provide a thorough justification for it in their report/notes.

8.4. Aggregate benefit accounts / benefits accrued

For an Accumulation Fund, SIS Regulation 9.04 essentially defines an unsatisfactory financial position as where the Entity's assets are inadequate to cover either "aggregate benefit accounts" or "benefits accrued to members". The terms "aggregate benefit accounts" and "benefits accrued to members" used in SIS Regulation 9.04(b) are not defined, but are commonly interpreted as the total of members' accounts in an Entity, excluding accounts not allocated to members.

9. Obligations to Notify Trustees/Regulator

9.1. Contraventions of legislation (section 129 of the SIS Act)

9.1.1. If section 129 of the SIS Act applies, a Fund Actuary is required to immediately notify the Trustee of an Entity in writing about the matter, unless the Fund Actuary has been told by another person (e.g. an auditor) to whom the relevant section applies that the other person (i.e. the auditor) has told the Trustee about the matter and the Fund Actuary has no reason to disbelieve that other person.

9.1.2. If section 129 of the SIS Act applies, a Fund Actuary is required to immediately notify the Regulator:

(a) in writing about the matter, if the Entity is not an SMSF and the contravention about which the Fund Actuary has formed an opinion is of such a nature that it may affect the interests of members or beneficiaries; or

(b) in the approved form, if the Entity is an SMSF;

unless the Fund Actuary has been told by another person to whom the relevant section applies (e.g. an auditor) that the other person has told the Regulator about the matter and the Fund Actuary has no reason to disbelieve that other person.

9.1.3. In circumstances other than those described in clause 9.1.2 above, the Fund Actuary may also advise the Regulator, but is not legally obliged to do so. Members are reminded that, in such circumstances, the Member would not have the benefit of the protections described in clause 10.1 of this Practice Guideline.

9.2. Possible Unsatisfactory Financial Position (section 130 of the SIS Act)

9.2.1. If section 130 of the SIS Act applies, the Fund Actuary is required immediately to notify:

(a) the Trustee of the Entity in writing about the matter, unless the Fund Actuary has been told by another person to whom the relevant section applies (e.g. an auditor) that the other person (i.e. the auditor) has told the Trustee about the matter and the Fund Actuary has no reason to disbelieve that other person; and

(b) the Regulator in writing about the matter, unless the Fund Actuary has been told by another person to whom the relevant section applies (e.g. an auditor) that the other person (i.e. the auditor) has told the Regulator about the matter and the Fund Actuary has no reason to disbelieve that other person.

9.2.2. It is noted that SPS 160 introduced additional circumstances in which the reporting requirements of Section 130 may also be triggered. For example:

(a) If the Trustee of an Entity forms the opinion that the Entity may have breached its shortfall limit, this may result in the Trustee requesting a Fund Actuary to undertake an interim actuarial investigation. As this task is an actuarial function under the Prudential Standards, the section 130 reporting requirements will be triggered if the Fund Actuary, in the course of carrying out the interim actuarial investigation, forms the opinion that the financial position of the Entity may be, or may be about to become, unsatisfactory.

(b) The Regulator can also direct a Trustee to engage a Fund Actuary to perform an actuarial investigation under SPS 160.

9.2.3. Practice Guideline PG 499.09 *Actuarial Requirements of Superannuation Prudential Standard 160* provides further guidance on SPS 160 requirements.

9.2.4. Where a Fund Actuary has notified APRA of an Entity's unsatisfactory financial position, the Fund Actuary has no further section 130 notification obligation to APRA for that Entity during the period until that Entity has returned to a satisfactory financial position and this has been advised to APRA.

This means that if an Entity (which has previously been reported to APRA as being in an unsatisfactory financial position) is thought to have briefly become satisfactory (but this event was not reported to the Regulator in any financial reporting or otherwise) but then returns to an unsatisfactory financial position again, no new section 130 reporting obligation is triggered.

9.2.5. Note that this Practice Guideline relates to the reporting obligations of Fund Actuaries, rather than those of a Trustee.

For example, a Trustee of an Entity in an unsatisfactory financial position may need to notify APRA if the notified restoration plan is amended in some way (which could include either strengthening or easing a supplementary contribution program to reflect changed circumstances).

9.3. Discretion to provide information to the Regulator (section 130A of the SIS Act)

9.3.1. It is a matter for the Fund Actuary's professional judgment to determine if they should provide information under section 130A of the SIS Act to the Regulator.

9.3.2. The circumstances of the case are expected to dictate what, if any, information is provided to the Regulator to assist it in performing its functions under the SIS Act, the SIS Regulations, the Prudential Standards, the FS(CoDA) or the Corporations Act 2001 (Cth).

9.3.3. If in doubt about the action to be taken in a particular case, it is expected that a Member would consider his or her obligations under the Code and act accordingly. This may include the Fund Actuary obtaining legal advice on their liability position before acting, or obtaining guidance from a suitably qualified and experienced Fund Actuary. The guidance in section 10 of this Practice Guideline may also be relevant.

9.4. Failure to implement actuarial recommendations (section 130C of the SIS Act)

9.4.1. If section 130C of the SIS Act applies, a Fund Actuary is required, as soon as practicable after forming the relevant opinion, to notify the Trustee of the Entity in writing about the matter, unless the Fund Actuary has been told by another person to whom the relevant section applies that the other person has told the Trustee about the matter and the Fund Actuary has no reason to disbelieve that other person.

9.4.2. If section 130C of the SIS Act applies, and if the failure to implement the relevant actuarial recommendation is of such a nature that it may affect the interests of members or beneficiaries, a Fund Actuary is required, as soon as practicable after forming the relevant opinion, to notify the Regulator in writing about the matter, unless the Fund Actuary has been told by another person to whom the relevant section applies that the other person has told the Regulator about the matter and the Fund Actuary has no reason to disbelieve that other person.

9.4.3. In circumstances other than those described in clause 9.4.2 above, the Fund Actuary may also advise the Regulator, but is not obliged to do so. Members are reminded that, in such circumstances, the Member would not have the benefit of the protections described in clause 10.1 of this Practice Guideline.

10. Liability, Whistleblowing and Self-Incrimination

10.1. Under each of sections 129(4), 130(3) and 130C(5) of the SIS Act, a Fund Actuary to whom the principal sections apply is not liable in a civil action or civil proceeding in relation to advising the Regulator or a Trustee of an Entity about a matter as required by those principal sections.

10.2. In the event that a Fund Actuary believes a report to the Regulator should be made under the provisions of section 130A of the SIS Act, the Fund Actuary is reminded that the statutory protection only extends to actions which come within the provisions of sections 129, 130 and 130C of the SIS Act (refer clause 10.1 of this Practice Guideline).

10.3. In circumstances where a Fund Actuary takes action in relation to a presumed contravention or Unsatisfactory Financial Position, but the SIS Act does not require such action (for example, where a Fund Actuary acts on the basis of his or her general professional responsibilities):

(a) it may be prudent to confine such action to communication with the Trustee of the Entity; and

(b) a Fund Actuary who felt that a report to the Regulator was warranted may wish to consider obtaining legal advice on his or her liability position before acting.

10.4. Section 130B of the SIS Act provides that the Fund Actuary is not excused from complying with a requirement to give information under sections 129 or 130 of the SIS Act on the ground that doing so would tend to incriminate the Fund Actuary or make the Fund Actuary liable to a penalty. However, in certain circumstances, information so given is not admissible in evidence against the Fund Actuary in a criminal proceeding or a proceeding for the imposition of a penalty (other than a proceeding in respect of the falsity of the information).

11. Penalties

11.1. Except for misinformation, a Fund Actuary who contravenes sections 129, 130 or 130C of the SIS Act is guilty of an offence punishable on conviction by a fine. The penalty for misinformation is imprisonment for (up to) 12 months. Misinformation refers to where a Fund Actuary falsely tells another party required to report a matter to a Regulator and/or a Trustee that the Fund Actuary has already reported that matter to the Regulator and/or the Trustee.

11.2. Any conviction would also constitute prima facie Misconduct under the Institute's Disciplinary Scheme and may result in disqualification as a Fund Actuary for an Entity or removal as a Fund Actuary to such Entities.

12. Professional Responsibility

12.1. This section of this Practice Guideline is included to remind Members of their professional obligations when dealing with superannuation funds generally, including their obligations under the Code.

12.2. Members have a professional responsibility in regard to prudential reporting that may extend further than the specific requirements discussed earlier in this Practice Guideline. Accordingly, there are circumstances in which Members may be expected to take action, notwithstanding that those requirements do not explicitly require any action.

12.3. The following examples, which are not exhaustive, illustrate circumstances where Members may generally be expected to impose higher standards than those requirements:

(a) where a Fund Actuary forms an opinion that a contravention of the legislative requirements referred to in section 129 of the SIS Act may have occurred, may be occurring or may occur, but section 129 of the SIS Act does not apply (that is, the opinion was not formed in the course of, or in connection with, the performance of an actuarial function, or the opinion is not relevant to the actuarial function), it is generally expected that the Fund Actuary would still notify the Trustee if the contravention is Material and the Fund Actuary believes the Trustee is not aware of the contravention or potential contravention;

(b) SIS Regulation 9.03(1) refers to assessing whether a Defined Benefit Fund's financial position "may be about to become unsatisfactory" in terms of the value of assets and vested benefits at the end of the specified three year period. Established practice is to interpret this as a continuous test;

(c) where the Fund Actuary forms the opinion that an Entity will (on reasonable expectations) be in a satisfactory financial position for a period of three years but will not be in a satisfactory financial position some time shortly after the expiry of three years, it is generally expected that the Fund Actuary would report this to the Trustee as if section 130 of the SIS Act applied;

(d) when assessing an Unsatisfactory Financial Position of an Accumulation Fund, neither the SIS Act nor the SIS Regulations place any time limit on the meaning of the words "may be about to become" in section 130 of the SIS Act. It is expected that Members would consider a three year time frame (consistent with the treatment of Defined Benefit Funds) in determining whether an Accumulation Fund's financial position may be about to become unsatisfactory;

(e) a Member who is requested to undertake an actuarial function for an Entity where actuarial functions have previously been undertaken by another Fund Actuary has obligations under the Code with respect to consultation with the previous Fund Actuary. An incoming Fund Actuary would be expected to carefully consider the potential implications before accepting actions proposed by the Trustee of an Entity in response to an Unsatisfactory Financial Position where the previous Fund Actuary has advised the Trustee that those proposed actions were not acceptable.

13. Application to Public Sector Funds

13.1. This Practice Guideline is applicable to Fund Actuaries of funded APRA-regulated public sector superannuation funds.

13.2. Aspects of this Practice Guideline relating to unsatisfactory financial position reporting may not be relevant to an APRA-regulated public sector fund which is partially funded or unfunded, however the other SIS Act prudential reporting obligations still apply. SPS 160 also contains specific provisions related to APRA-regulated funds which are not fully funded.

13.3. The reporting requirements for an exempt fund which is not regulated by the SIS legislation are not considered in this Practice Guideline. However, it is expected that an actuary of such a fund would apply professional judgment in considering any prudential issues that may merit prompt reporting to the fund Trustee any reporting obligations.

END OF PRACTICE GUIDELINE

Document Control

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