

Superannuation stapled fund measure starting soon

Since March 2020, the focus of our members has understandably been on the array of ever-evolving COVID-19 Commonwealth and state and territory support measures, particular those in New South Wales and Victoria who have been navigating extended lockdowns. Thankfully, we are finally seeing signs of these populations emerging from the more restrictive aspects of the public health orders in the weeks ahead, with New South Wales having hit its 70% fully vaccinated target this week and Victoria expected to do so around 26 October.

Turning your attention to some 'less urgent' developments in superannuation administration has, also understandably, not been a top priority for some of you — after all, it seems that there are 22 hours in each working day. Nevertheless, the new stapled fund measure is commencing soon, and it is important that you and your clients are across this change.

Legislative framework

The superannuation reforms, *Your Future, Your Super*, announced as part of the Federal Budget 2020–21, includes the requirement, from **1 November 2021**, for most employers to check with the ATO if their new employee — who has not chosen a superannuation fund — has an existing superannuation account into which the employee's superannuation guarantee (**SG**) contributions will be paid.

The legislative framework is contained in new Division 7 of Part 3A (about choice of fund requirements) of the *Superannuation Guarantee (Administration) Act 1992*. The new rules were inserted by Schedule 1 to the *Treasury Laws Amendment (Your Future, Your Super) Act 2021* that was enacted on 22 June 2021.

Currently, if an employee does not choose a fund, their employer makes SG contributions on behalf of the employee into the employer's chosen default fund. But allowing employers to make SG contributions into their chosen default fund has resulted in the creation of unintended multiple superannuation accounts. How many of us over the years amassed multiple superannuation accounts due to changing jobs, particularly in our younger years?

This has lessened members' retirement savings through the payment of unnecessary fees and insurance premiums on unintended multiple superannuation accounts.

New stapled fund rules

The new rules are designed to limit the creation of multiple superannuation accounts every time an employee starts a new job. A 'stapled fund' is an existing superannuation account which is linked, or 'stapled', to an individual employee so that it follows them as they change jobs.

The rules apply only where the employee:

- starts their employment on or after 1 November 2021 (**new employee**);
- has a stapled fund; and
- has not chosen a fund to receive SG contributions.

In this case, their employer will be required to make SG contributions on behalf of the employee into the stapled fund.

Employers can continue to make SG contributions to their preferred default fund for new employees only where:

- the employee has not chosen a fund to receive SG contributions;
- the employer has requested that the Commissioner identify whether the employee has a stapled fund; and
- the Commissioner has notified the employer that there is no stapled fund for the employee.

Types of stapled funds

Any complying superannuation fund of which the new employee is member is broadly an eligible stapled fund. This includes defined benefit funds; however, some defined benefit accounts may not be able to accept contributions from all employers.

If a stapled fund request made with the ATO returns a self-managed superannuation fund, the employer should obtain the electronic services address and bank account details from their new employee. If the employee will not supply these details, the employer should contact the ATO.

What if there are multiple existing superannuation accounts?

An employee may have multiple existing eligible superannuation accounts. In this case, the ATO will apply 'tiebreaker' rules as outlined in paragraph 17A(3) of the [Superannuation Guarantee \(Administration\) Regulations 2018](#) to select the stapled fund.

These rules consider:

- whether the ATO has previously identified a superannuation account as a stapled fund;
- how recently SG contributions have been made to each of the accounts;
- the account balances; and
- how recently each of the accounts was created.

Members who are concerned how the tiebreaker rules will be applied by the ATO should be encouraged to use a superannuation standard choice form to nominate their preferred fund.

Bulk requests

The ATO will make a bulk request form available if stapled fund details need to be requested for more than 100 new employees at once. Bulk requests will have a service standard of up to five business days.

Transitional period

During a proposed transitional period from 1 November 2021 until 31 October 2022, the Commissioner will reduce any choice shortfall to nil if that shortfall arose due to the employer's lack of knowledge of the stapled fund requirements rather than intentional disregard.

How can you assist your clients?

Your clients who are new employees should be encouraged to choose their own superannuation fund by helping them to understand the [superannuation standard choice form](#).

It is important that you do not provide advice on any financial product (this includes advising on whether an individual should choose their own superannuation fund versus defaulting to the employer's preferred fund and the benefits of choosing their own fund) unless you are licensed by the Australian Securities and Investments Commission (ASIC) to provide financial advice.

Similarly, employers cannot provide recommendations or advice about superannuation to their employees, unless they are appropriately licensed.

Your clients who are employers should be made aware of the new obligation to request that the Commissioner identify whether their new employee has a stapled fund.

Employers should take the following steps:

1. Offer their new eligible employees a choice of superannuation fund, and if the employee makes a choice, the SG contributions must be paid into that fund.
2. Request stapled fund details if the new employee does not choose a superannuation fund.
3. Pay the SG contributions into the stapled fund if the ATO provides a stapled fund result the new employee.