



# LEGISLATIVE IMPACT ASSESSMENT

Review of the impacts on defined benefit  
schemes from amendments to the SGAA

November 2022

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# Executive summary

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## Background to the review

The *Superannuation Guarantee (Administration) Act 1992* (the SGAA) was amended on 4 September 2020 by the *Treasury Laws Amendment (Your Superannuation, Your Choice) Act 2020* (YSYC Act).

The amendments extended the circumstances in which choice of fund must be offered to employees to include where contributions are made for them under a workplace determination or enterprise agreement that is made on or after 1 January 2021. The SGAA was also amended to insert an additional exemption from choice of fund requirements, to clarify the limited circumstances in which employers would not have an increased individual superannuation guarantee shortfall for not providing certain members of a defined benefit (DB) scheme with choice of fund.<sup>1</sup>

The YSYC Act requires APRA to conduct a one-off review into the operation of the amendments to the SGAA to identify any unintended consequences of these amendments for defined benefit schemes, including the ongoing viability and profitability of DB schemes. APRA is also required to consider whether any further amendments are required to the SGAA to rectify any unintended consequences identified by the review.

## Summary of the review

This report presents the findings of APRA's review. APRA conducted the review in accordance with the requirements of the YSYC Act and did not identify any unintended consequences on the operation or ongoing viability and profitability of defined benefit schemes that can be attributed to the amendments to the SGAA. As a result, APRA's view is that no further amendment to the SGAA or any other Act is required as a consequence of the YSYC Act amendments.

The report outlines how APRA conducted the review, the approach included consultation with industry stakeholders and analysis of relevant available data.

Consistent with s. 4 of the YSYC Act, APRA has completed the review within 30 months of the commencement of the amendments. The report has been provided to the Minister responsible for administering the SGAA.

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<sup>1</sup> Prior to the amendments, employers did not have to provide choice of fund to employees where contributions were made for an employee under a workplace determination or enterprise agreement, regardless of when the determination or agreement was made.

# Glossary

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AIST	Australian Institute of Superannuation Trustees
DB	Defined benefit
RSE	Registerable superannuation entity
SGAA	<i>Superannuation Guarantee (Administration) Act 1992</i>
YFYS Act	<i>Treasury Laws Amendment (Your Future, Your Super) Act 2021</i>
YSYC Act	<i>Treasury Laws Amendment (Your Superannuation, Your Choice) Act 2020</i>

# Chapter 1 - Introduction

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## Background

The *Superannuation Guarantee (Administration) Act 1992* (the SGAA) was amended on 4 September 2020 by the *Treasury Laws Amendment (YSYC) Act 2020* (Your Superannuation, Your Choice Act). The YSYC Act requires APRA to conduct a one-off review into the operation of the amendments to the SGAA to:

- identify any unintended consequences of the amendments made by the YSYC Act on the operation of DB schemes, including the ongoing viability and profitability of DB schemes; and
- consider whether amendments to the SGAA or any other Act are necessary to rectify any unintended consequences identified by the review.

APRA has conducted this review in accordance with the YSYC Act. The review related to the period from the date of the commencement of the amendments until 8 September 2022.

## Review scope, coverage and methodology

APRA consulted with industry stakeholders in conducting the review.

On 30 June 2022, APRA released a letter addressed to all RSE licensees of DB funds for consultation on the review of amendments to the SGAA.<sup>2</sup> The letter included questions on the main topics in the scope of the review about the:

- overall impacts on the DB scheme;
- impacts of choice of fund changes; and
- impacts of the exemption from shortfall changes.

The letter also included a data request in relation to the impact on the RSE licensee's DB schemes.

Consultation closed on 8 September 2022. APRA received three written submissions; two from RSE licensees of closed DB schemes and one from an RSE licensee of a DB scheme that is open to new members.

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<sup>2</sup> [Review of amendments to the Superannuation Guarantee \(Administration\) Act 1992 | APRA](#)

Written submissions that have not been identified as confidential will be published on the *Review of amendments to the SGAA* consultation page of APRA's website at the time of releasing this report to the public.

As part of the industry stakeholder consultation, APRA met with the Australian Institute of Superannuation Trustees (AIST) DB special interest group, which included representatives from seven RSE licensees of DB schemes.

APRA's ability to incorporate data analysis in the review was limited. Only two RSE licensees responded to APRA's data request and whilst APRA obtains data on DB schemes through its superannuation reporting standards, the ability to draw robust conclusions from this data was constrained by the relatively short time horizon of the review.<sup>3</sup> For example, the YSYC Act came into effect on 1 January, 2021 and since then APRA is only able to assess changes over one annual reporting period.

Attachment A provides a summary of the submissions received and the data analysed during the course of the review.

## Engagement with other government agencies

APRA's review included discussions with agencies with responsibilities relating to superannuation - the Australian Securities and Investments Commission (ASIC), the Australian Tax Office and the Commonwealth Department of the Treasury (the Treasury). ASIC and the Treasury also observed the AIST DB special interest group discussion.

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<sup>3</sup> APRA receives DB scheme related data under *Reporting Standard SRS 160.0 Defined Benefit Matters* and *Reporting Standard SRS 160.1 Defined Benefit Member Flows*.

# Chapter 2 - Assessment

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APRA's review did not identify any unintended consequences of the YSYC amendments on the operation of DB schemes, including the ongoing viability and profitability of DB schemes. In APRA's view, no amendments are necessary to the SGAA or any other Act to rectify unintended consequences.

## Detailed assessment

### Overall impacts on the DB scheme

Respondents did not identify any direct unintended consequences resulting from the changes made by the YSYC Act. APRA's data analysis did not identify any notable changes in key metrics that suggested impacts on the operation of DB schemes, including their ongoing viability and profitability, resulting from the changes made by the YSYC Act.<sup>4</sup>

### Impact of choice of fund changes

APRA found no evidence from the responses received that changes made by the YSYC Act to the circumstances in which choice of fund must be offered to employees have had any unintended consequences on the operation of DB schemes. One respondent flagged a reduction in new members joining the DB division of the fund, but this was attributable to changes necessitated by the introduction of the stapling requirements under the *Treasury Laws Amendment (Your Future, Your Super) Act 2021* (YFYS Act).

The review did not identify any notable changes to membership numbers over the period covered by the review.

### Impact of exemption from superannuation guarantee shortfall

Submissions did not report unintended consequences on the operation of DB schemes from the changes made by the YSYC Act in relation to the additional DB scheme exemptions from superannuation guarantee shortfall.

### Other impacts

APRA found no other impacts of the amendments made under the YSYC Act.

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<sup>4</sup> Refer to Attachment A for a description of the data analysis approach.

# Attachment A: Consultation overview

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## Summary of responses

RSE licensees responded to the questions asked in APRA's consultation letter. Their submissions included brief information on the DB schemes they offer, reporting that there have been no significant changes to their schemes since 30 June 2020, with the exception of one scheme closing due to the employer choosing to establish a plan with another provider due to reasons unattributed to the YSYC amendments.

RSE licensees reported no direct or material impacts to the operation, profitability and viability of their DB schemes. The most direct consequence of the amendments was to provide information and advice to members and employers in relation to the changes.

On choice of fund impacts, submissions reported no unusual patterns of member movement out of DB schemes. Submissions also stated that there were already situations in which members could exercise choice, which varies from employer to employer. They also stated that any of the new requirements need to be reflected as part of establishing new enterprise agreements, which is a matter for the industrial parties negotiating the agreements.

RSE licensees reported that they were unaware of any instances of employers being subject to a penalty increase in the superannuation guarantee shortfall as a result of not providing choice of fund to members of their DB schemes.

One submission identified an indirect impact, attributed to the combined effects of the YSYC Act amendments and the stapling requirements under YFYS Act. This RSE licensee reported that it has changed its Defined Benefit Division from a default to an opt-in option and the number of new entrants to the Defined Benefit Division has reduced since this change was made. The submission noted that the YSYC Act amendments alone would not have necessitated the change highlighted in the submission.

## AIST DB special interest group: Key discussion points

The meeting with the AIST DB special interest group was attended by representatives from seven RSE licensees, whose business operations include open or closed DB schemes. The group was made aware of the opportunity to make submissions should they want to provide any written observations, including to raise any concerns. The discussion did not highlight any adverse impact on DB schemes resulting from the changes by the YSYC Act amendments.

## Data analysis

APRA received limited data from submissions. Analysis of DB scheme related data under SRS 160.0 and SRS 160.1, including membership numbers and vested benefit indices, did not show any clear trends that could be a result of changes made by the YSYC Act.



APRA