



Circular 2021/06: Superannuation Stapling

Guidance for Commonwealth employers on the Government's *Your Super, Your Future* Reforms

Purpose

1. The purpose of this Circular is to provide information to Commonwealth employers about the Government's *Your Future, Your Super Reforms* (YFYS Reforms), which include new superannuation obligations on employers under choice of fund arrangements from 1 November 2021. The Circular also highlights an issue that may affect the rate of employer superannuation contributions provided to new employees in some workplace arrangements.

Legislative changes

2. The YFYS Reforms were enacted by the passage of the *Treasury Laws Amendment (Your Future, Your Super) Bill 2021*, which received Royal Assent on 22 June 2021.
3. The YFYS Reforms introduce the concept of a 'stapled fund' in order to limit the creation of multiple superannuation accounts for employees (including Australian Government employees) who do not choose a superannuation fund when they start a new job.
4. From 1 November 2021, where a new employee does not nominate a fund, employers will be required to contact the Australian Taxation Office (ATO) to request details about whether a new employee has a pre-existing stapled fund. If the employee has a stapled fund, contributions made to a fund specified by a workplace arrangement will not satisfy the choice of fund requirements of the *Superannuation Guarantee (Administration) Act 1992*. Therefore, where an employee has a stapled fund, the employer superannuation contributions should be paid into the employee's stapled fund rather than the employer's default fund.
5. Any queries that agencies have about the YFYS Reforms should be directed to the ATO.

Interaction of super stapling and existing workplace arrangements

6. Some agency workplace arrangements specifically provide a contribution rate of 15.4 per cent for those members of the default Commonwealth fund, the Public Sector Superannuation Accumulation Plan (PSSap), or for those exercising super choice. An example of a typical clause is:

The [agency] will provide an employer contribution of 15.4% of Ordinary Time Earnings (OTE) for members of the Public Sector Superannuation Accumulation Plan (PSSap) and for those employees exercising superannuation choice.
7. Workplace arrangement terms that specify a contribution rate of 15.4 per cent only for those in PSSap or for those exercising super choice reflect the options available at the time the arrangement was made. However, the YFYS Reforms introduce a third option of a stapled fund, which is neither a default fund or a choice fund.

8. In the absence of explicit provision for a particular employer superannuation contribution rate in a workplace arrangement, employees in a stapled fund other than PSSap will only be entitled to an employer superannuation contribution rate equal to the Superannuation Guarantee rate specified in the *Superannuation Guarantee (Administration) Act 1992* – currently 10 per cent.

Policy intent and agency actions

9. It is not the intent of the legislation that employees in a stapled superannuation fund receive employer superannuation contributions at a rate less than that which is currently provided in agencies' workplace arrangements.
10. Agencies should examine their existing workplace arrangements and ensure the provisions applying to default and choice funds will also apply to stapled superannuation funds.
11. If action is required to achieve consistency, one option available to APS Agency Heads is to make a determination under section 24(1) of the *Public Service Act 1999* (PS Act) to provide for the same employer superannuation contribution rate for a stapled fund as applies to a default or choice fund. Agencies who do not engage employees under the PS Act may have the ability to make comparable determinations under their agency's own enabling legislation.
12. The Australian Public Service Commission (APSC) will make available a template determination for this purpose. This template may also be suitable for use by non-APS agencies, with legislative references amended as required. Where agencies use the suggested determination drafted by the APSC it will not be necessary to seek further approval from the APS Commissioner under the *Public Sector Workplace Relations Policy 2020* before the determination can be enacted.
13. Where it is not considered possible or desirable to make a collective determination, agencies may consider relying upon Individual Flexibility Arrangements or instead choose to specify an employer superannuation contribution rate in an employment contract, such as an offer of engagement.
14. Agencies can draft superannuation terms in workplace arrangements to appropriately reference stapled funds when they next replace their arrangement.
15. Failure to review existing workplace arrangements and take remedial action could result in employees with a stapled fund not being entitled to superannuation contributions at the higher rate of 15.4 per cent, as otherwise intended.
16. Agencies may wish to seek legal advice specific to their circumstances.

Further information

17. The ATO has published information about stapled funds on the [ATO website](#).
18. Agencies with questions on these issues are encouraged to contact their APSC relationship manager or the Workplace Relations inbox at workplacerelements@apsc.gov.au.