

Cross-agency process for innovative retirement income stream products

From 1 July 2017, new pension and annuity standards in the *Superannuation Industry (Supervision) Regulations 1994* will provide the required features and terms of innovative retirement income stream products.

Products that meet these standards will meet the definition of a superannuation income stream for the purposes of the *Income Tax Assessment Act 1997* and will qualify for earnings tax exemptions when they are in the retirement phase.

The new pension and annuity standards remove regulatory barriers to the creation of innovative retirement income streams described in Treasury's 2016 Review of Retirement Income streams.

This review also recommended developing a coordinated administrative process to streamline the way product providers interact with multiple government agencies. This cross-agency process is the government's response to that recommendation.

The government expects these changes will result in:

- product providers bringing new innovative income streams to market
- greater choice and flexibility for retirees to manage the risk of outliving their retirement savings and enhance their standard of living in retirement.

Process and requirements for providers of new retirement income stream products

Intention of the cross-agency process

The cross-agency process seeks to provide a streamlined pathway for product providers to raise topics or issues arising from new innovative retirement income stream products with the key government agencies responsible for the regulation of retirement income stream products and the entities that provide them.

The intention of the cross-agency process is to:

- facilitate engagement by providing a single entry point to initiate contact with the relevant government agencies
- allow product providers to test concepts, seek information and high level guidance in response to the topics or issues they have raised and their view on how the product meets the requirements of the relevant legislation
- complement existing processes within the individual agencies.

Providers may at all times engage directly with any agency outside this process.

Note: The cross-agency process will be regularly reviewed and may be further refined and enhanced as requests are received and new products are presented.



Agency roles within the cross-agency process

The following government agencies will be involved in the cross-agency process:

- Australian Taxation Office (ATO)
- Australian Prudential Regulation Authority (APRA)
- Australian Securities & Investments Commission (ASIC)
- Department of Social Services (DSS)

Their roles and responsibilities within superannuation and life insurance are outlined below.

How Australian Taxation Office (ATO) can help

We administer a range of tax and reporting obligations that can apply to:

- product providers
- superannuation funds and their members
- life insurance companies and their policy holders.

A number of these obligations may be relevant considerations when developing innovative income stream products.

We can help with:

- the general consideration of those obligations
- identifying appropriate options for obtaining certainty regarding the application of tax law to specific products and their features where specific advice is sought. For example, we can provide rulings for these products, including either a private ruling or a product ruling. An application for a private or product ruling will need to be made outside of the cross-agency process via the existing private ruling or product ruling process.

Co-ordinating the cross-agency process

We will also take lead responsibility as the coordinator for the cross-agency process.

Australian Prudential Regulation Authority (APRA)

APRA does not approve or authorise retirement income stream products. APRA's approach recognises that the board and management of RSE licensees and life companies are primarily responsible for the sound and prudent management of their operations.

APRA seeks to promote sound prudential practice by assisting product providers to interpret, understand and comply with relevant prudential requirements and guidelines; and ensure they have appropriate frameworks in place to manage risks arising from their retirement income stream products.

APRA's engagement with product providers will form part of its ongoing supervision of regulated entities. Product providers should benefit from the focused nature of the engagement and the simultaneous engagement with other agencies.

Australian Securities & Investments Commission (ASIC)

ASIC does not formally approve superannuation or other products, or provide legal advice. However, as with APRA, it can provide input to regulated entities on issues of concern.

ASIC can provide information and guidance to product providers regarding:

- disclosure documents – to assist product providers comply with the requirements of the *Corporations Act 2001* regarding a financial product they have on offer for potential consumers and investors
- licensing requirements – Australian Financial Services (AFS) licencing authorisations, including to provide financial product advice
- conduct requirements – what is expected from participants in the financial services sector, particularly with regards to their relationship with consumers.

In some instances ASIC can exercise its discretionary powers to provide relief from certain provisions of the *Corporations Act* or *Superannuation Industry (Supervision) Act 1993* as they apply to a person, where this may result in atypical or unforeseen circumstances or unintended consequences. This might be of relevance particularly to new and innovative product providers.

For more information see ASIC Regulatory Guide 51 available at asic.gov.au.

Department of Social Services (DSS)

DSS can provide information and guidance in on how a retirement income product and the related income and assets may be assessed under the social security means test.

The product provider's role in the cross-agency process

Product providers utilising the cross-agency process will have the following responsibilities:

- to consider any issues on how the law or regulatory framework might apply to the product and provide a preliminary view or position regarding these issues
- provide all information required as part of the request form to all agencies
- respond to requests for further information within the requested timeframe
- advise of any changes to the names or contact details of relevant representatives
- actively engage with all agencies throughout the process
- be open and transparent and engage with full and accurate disclosure.

It is the responsibility of the product provider to ensure complete and considered requests are made. This includes identifying:

- relevant legislative or other regulatory requirements
- how they apply to the proposed retirement income product
- any issues arising where they seek clarity from any of the agencies.

Product providers who have an incomplete request will be unable to continue with the cross-agency process until the relevant information is provided.

Constraints and limitations of the process

The intention of the cross-agency process is to facilitate the interaction of product providers with relevant government agencies to test the development of a new innovative retirement income stream product. This process streamlines the request process and discussions, but does not replace existing processes within each agency.

The type of information and guidance provided by each agency will differ depending on their particular regulatory responsibilities and powers, and:

- should not be seen as providing formal endorsement or a recommendation regarding a given product
- must not be used in any marketing or promotional material, unless explicitly provided for that purpose by the agency within the course of its regulatory or administrative authority.

Participation by a product provider in the cross-agency process does not substitute for a provider getting its own legal and other technical advice as necessary for the entity to understand and manage key risks arising in their particular circumstances during the development of an innovative retirement income stream product.

Through the cross-agency process we will aim, where relevant, to provide a consistent position on the topics or issues raised.

Note: maintaining the confidence and confidentiality of product providers is important, and may mean that at times an individual agency may be limited in the information it can collectively share with all agencies.

Using the cross-agency process

What to expect

Participation in the cross-agency process and the information and guidance provided by each government agency regarding the issues and views raised may assist product providers decide whether to:

- proceed with development of the product
- alter its characteristics to better comply with the law, or
- discontinue development of the proposed product.

Submitting a request

A product provider can submit a concept exploration or product review request, via the **New innovative retirement income stream product: Cross-agency request form (NAT 74931)** at any time during their product development process.

If you are unable to open and use this form due to system issues, download it by right clicking on the link and selecting 'Save target as'. Email your completed form to ALL of the following email address:

- retirementincomestreams@ato.gov.au
- retirementincomestreams@pra.gov.au
- retirementincomestreams@asic.gov.au
- retirementincomestreams@dss.gov.au

If you require any further assistance in completing the request form, email us at retirementincomestreams@ato.gov.au.

When to use the process

The cross-agency process is voluntary and can be utilised by product providers at any time during the development of their innovative retirement income stream product.

The following two key engagement points have been developed to assist product providers in determining the most relevant point within the product development lifecycle to utilise the cross-agency process.

- 1 Concept exploration** – will give product providers the opportunity to test the concepts of the product they are proposing to develop, or are in the early stages of developing, to seek information and guidance on the relevant legislation, in response to the topics or issues they have outlined and the preliminary view provided in their request.
- 2 Product review** – will give product providers the opportunity to present a product that is at a more mature development stage to seek information and guidance on the relevant legislation, in response to the topics or issues outlined and the preliminary view provided in their request.

Concept exploration process

Step 1 – Initial contact

Product provider completes the cross-agency process request form by selecting *Concept exploration* and providing the requested information including:

- type of product
- high-level overview of the product
- design details of the product
- statement demonstrating an understanding of how the product meets the regulatory requirements
- any technical advice obtained of relevance to the request
- list of topics or issues the product provider wants the agencies to consider, including the provider's preliminary view and reasoning for this view

Step 2 – Receive confirmation of request

The cross-agency co-ordinator will contact the product provider via email within two business days to acknowledge receipt and provide a reference number for the request.

This reference number must be used in any future correspondence.

Step 3 – Outcome

Each agency will consider the information and any additional supporting information and documents provided via the Cross-agency process request form.

The product provider will be provided with a non-binding written summary from the agencies that may include:

- responses to the topics raised by the product provider in the request
- next steps or external referral processes they may need to consider and the details for any relevant contacts required to help in this process.

Product review process

Step 1 – Initial contact

Product providers seeking to raise issues at a more mature development stage, complete the cross-agency process request form by selecting *Product review* and providing the following details as a minimum:

- type of product
- statement demonstrating an understanding of how the product meets the regulatory requirements
- draft term sheet/product specification that gives a summary of the:
 - product features
 - intended income tax treatment
 - Superannuation Industry (Supervision) Act treatment/compliance
 - accounting treatment
- for products with a guarantee of any type, a schedule of payments covering the guaranteed periods
 - for any indexed payments, the estimated rate of indexation should also be provided – e.g. lifetime annuity indexed by CPI where CPI is assumed to be 2.5% per annum
- worked examples showing how the product operates
- any legal, actuarial or accounting advice that has been obtained by the applicant
- list of topics or issues the product provider wants the agencies to consider, including the provider's preliminary view and reasoning for this view
- intended distribution or advice model for the product and information on how this satisfies the *Corporations Act 2001*.

Optional supporting information (where developed):

- draft product disclosure statement
- draft trust deed amendments for superannuation fund offering the product
- draft information brochures or guides that will be provided to people taking out the products
- any life insurance policy where the product is offered by a life insurance company or where the superannuation fund offering the policy has taken out a life insurance policy in relation to the product.

Step 2 – Receive confirmation of request

The cross-agency co-ordinator will contact the product provider via email within two business days to provide a reference number to the request.

This reference number must be used in any future correspondence.

Note: Applications that do not meet the minimum standards outlined above will be considered for a *Concept exploration* only.

Step 3 – Outcome

Each agency will consider the information and any additional supporting information and documents provided via the cross-agency process request form.

The product provider will be provided with a non-binding written summary from the agencies that may include:

- responses to the topics raised by the product provider in the request and during the meeting
- next steps or external referral processes they may need to consider and the details for any relevant contacts required to help in this process.

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