

Understanding your new superannuation obligations - Single Default Account ('stapling') Employer FAOs

As part of the federal Budget in October 2020, the government announced the *Your Future, Your Super (YFYS)* package. YFYS is a comprehensive package of reforms designed to ensure the superannuation system delivers better outcomes for members. The new Treasury Laws Amendment (Your Future, Your Super) Bill 2021 will apply from 1 November 2021.

A **key reform for employers** is *Single Default Account* ('stapling'), covered in this document.

For more information on the other reforms in the YFYS package, please visit beamconnect.com.au/stapling

What is stapling?

Single Default Account ('stapling') means that where a new employee does not make a choice of superannuation fund on or after **1 November 2021**, employers will be required to search for that employee's 'stapled' fund using the ATO Request Stapled Fund Online Service and direct contributions to that fund.

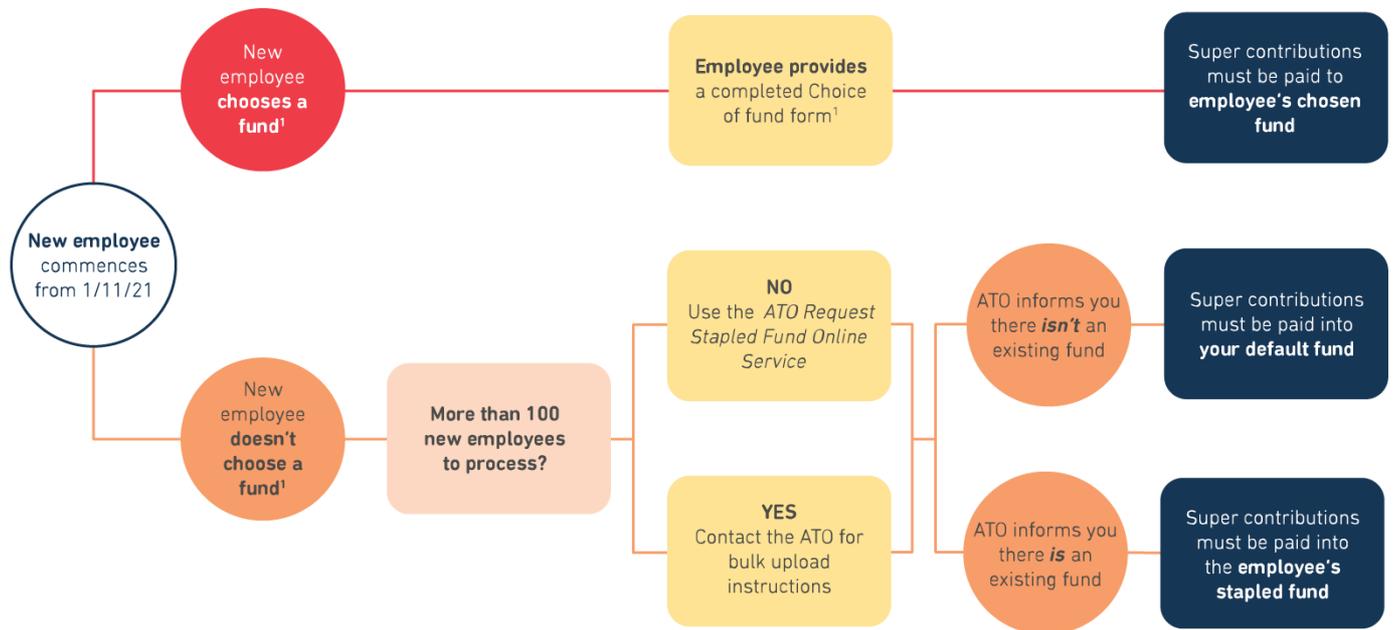
If a new employee advises the employer of their choice of superannuation fund, the employer is not required to contact the ATO to confirm the employee's stapled fund.

How does stapling work?

Understanding the obligations:

For any **new employees** from 1 November 2021

Source: Australian Institute of Superannuation Trustees, May 2021
¹Where an employee chooses your chosen default fund, this will need to be nominated in the Choice of fund form



For **existing employees** from 1 November 2021



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New employee scenario	Current onboarding process	Onboarding process from 1 November 2021
New employee has an existing (stapled) fund but makes no choice of fund when joining employer.	Employer opens new account for employee in default super fund and makes contributions to it.	Employer contacts ATO to find employee's stapled fund and makes contributions to it.
New employee has no existing (stapled) fund and makes no choice of fund when joining employer.	Employer opens new account for employee in default super fund and makes contributions to it.	Employer contacts ATO to find employee's stapled fund and when advised no stapled fund exists, makes contributions to default fund.
New employee has an existing (stapled) fund but chooses a new fund via an ATO Standard choice form .	Employer makes contributions to the employee's chosen fund.	Employer makes contributions to the employee's chosen fund.

What happens if there is no stapled fund?

Where an employee does not make a choice of superannuation fund and the ATO advises there is no stapled fund, employers can make superannuation contributions into their default fund.

If a new employee completes the ATO Standard choice form, do employers still need to contact the ATO to see if this is the employee's stapled fund?

No. If an employee elects their choice of superannuation fund using the ATO **Standard choice form**, the stapling obligations do not apply and an employer must make payments to the chosen account. An employer does not need to contact the ATO to confirm the employee's stapled fund details in this instance. Employers should keep a copy of the **Standard choice form** on file to demonstrate compliance.

What is the difference between a choice fund and a stapled fund?

Most employers need to provide their employees with the ATO **Standard choice form** in order to meet their obligations. The ATO does not have visibility of any paper forms an employee completes and gives to their employer.

However, through **ATO online for Individuals**, an employee may complete the 'new employment' form. This gives them the option to complete a pre-filled ATO **Standard choice form** along with other forms relevant to starting a new job. This form is pre-filled with all existing superannuation accounts and the employee has a choice to select an existing fund or nominate to use the employer's default fund. Once they have completed this form for an employer, they can print it and give it to them. A record of their choice is saved in ATO systems.

Prior to providing an employer with stapled fund information (on their request), the ATO will check to make sure that the employee has not already made a choice using this online form. If they have, the system will provide the employer with details of the employee's choice, which could be a MySuper Product, a non-MySuper product or an SMSF.

The difference between the system returning a choice fund, as opposed to a stapled superannuation fund, is simply whether the employee has completed the online ATO **Standard choice form** in **ATO online for Individuals**.

How do employers find details of a new employee's stapled fund?

Available from **1 November 2021**, an online request stapled fund form will be accessible through **Online Services for Business**, **ATO online for Individuals** and **Online Services for Agents**. Employers, or agents acting on behalf of employers, will need to input information about their employees into the form and they will receive an online response as soon as the form

is processed (expected within minutes). Employers who have not enabled online services will have the ability to access this information over the phone.

Please note that the stapled fund measure only applies to employees who commence on or after **1 November 2021**.

How will the ATO help employers comply with these changes?

The ATO is committed to helping employers and their agents understand and become familiar with the new requirements related to stapled superannuation funds to make this change as easy as possible. As this change is introduced, the ATO will support employers with help and assistance as a first step to improving compliance, recognising initial noncompliance may be a result of a lack of knowledge and/or business readiness rather than a non-compliant attitude. The ATO understands that despite an employer or agent's best efforts, genuine mistakes and misunderstandings will occur.

Will default funds still be able to be used?

If an employee provides a choice of fund to their employer, including a choice to use the employer default fund, the employer should make contributions in accordance with the ATO [Standard choice form](#) from their employee. An employer only needs to request a stapled fund for employees who commence on or after **1 November 2021** in circumstances where no choice of fund is received.

If the ATO advises that there is no stapled superannuation fund for an employee, the employer will be able to make contributions to their default fund.

Can employees refuse to have their employer use this service?

Where an employee wants their superannuation paid into an existing fund or an employer's default fund and they're eligible for choice, they can complete the ATO [Standard choice form](#) and nominate the fund for their contributions.

If an employee doesn't choose a superannuation fund, most employers will be required to request a stapled fund. An employee is unable to say that they don't want this process to occur, or to nominate which of their existing superannuation accounts becomes the stapled fund.

What happens if the employee has multiple eligible funds?

Where a new employee has multiple existing funds, the ATO will apply tiebreaker rules to identify the stapled fund. The rules consider the most recent fund identified by the ATO, the fund that received the most recent contribution, the fund that held the largest account balance and other factors such as when the employee became a member, or holder, of each eligible fund.

What happens if an employer has an enterprise bargaining agreement (EBA)?

If an employer has an EBA in place and a new employee has not chosen a superannuation fund but has an existing stapled fund, the employer must make contributions to that stapled fund.

If the new employee does not have a stapled fund, the employer is able to open a superannuation account for them in the default fund specified under a workplace determination or an EBA, provided the determination or agreement was made before **1 January 2021**.

What about existing employees?

Existing employees aren't affected by these changes. Employers must continue to make their compulsory superannuation guarantee (SG) payments into the same superannuation fund they do today.

What does this mean for an employer's onboarding process?

The new stapling rules mean employers will have to review the onboarding material they supply to new employees including their *Letter of offer* to ensure these correctly reflect this change to choosing a superannuation fund. We will provide employers with an updated *New Starter Flyer* with information for new employees on joining Sunsuper.

How will the changes be implemented?

From **1 November 2021**, additional choice of fund requirements will apply with the *Single Default Account* ('stapled fund') requirements. From **1 November 2021** until **31 October 2022** the ATO will provide employers with help and assistance to comply with stapled fund requirements. During this transitional period, the Commissioner will reduce any choice shortfall to nil if it arose due to the employer's lack of knowledge of the stapled fund requirements rather than intentional disregard. This transitional approach applies only to the stapled fund changes to the choice of fund requirements, not to the existing choice rules. From **1 November 2022**, the transitional approach will no longer apply and the ATO will instead apply its general guidelines.

I am onboarding 100s of employees at a time, what is the ATO going to do to help me with this?

The ATO recognises that completing multiple stapled superannuation fund requests may be difficult for some employers who onboard large numbers of employees at a time. As a result, the ATO is developing a **bulk upload** solution to assist employers and their agents in making large volume stapled superannuation fund requests. This is expected to be available from **1 November 2021**. Requests to use the **bulk upload** service must be made directly with the ATO.

The ATO is also working with Digital Service Providers in relation to a solution that can be integrated into payroll software by July 2022.

Is the ATO monitoring the request stapled superannuation fund service?

Yes. The ATO will be monitoring the service to ensure employers are using it appropriately and making genuine requests for stapled superannuation fund details when required.

How do employers contact the ATO?

The ATO has confirmed the employer request stapled superannuation fund service will be a two phased approach:

Phase 1 - 1 November 2021

- Employers will need to use the **ATO Request Stapled Fund Online Service** to obtain fund details for employees who started their employment on or after **1 November 2021** and do not chose a superannuation fund.
- The process will **initially be a manual** one, as illustrated on the following page.
- A request cannot be made to the ATO until an employee has started their employment.
- A temporary and limited **bulk upload** solution will exist (likely for 100+ employees).

Phase 2 - 1 July 2022

- A wholesale service will automate the interaction between employer's payroll systems and the ATO when requesting stapled superannuation fund details.
- Uptake on phase 2 is voluntary.
- Solution may be available earlier depending on design timelines with Digital Service Providers.

What does the proposed ATO Request Stapled Fund Online Service look like?

The proposed system screenshots below were supplied by the ATO in July 2021. The development of this solution is still in progress and is subject to change. It is important to be aware that this is a manual process and will be required to be completed for each employee.

Step 1 - Make a request

Request a [stapled fund account](#) for employees who have **not provided you with their super choice**.
To be eligible to make this request:
> the employee must have commenced employment on or after 1 November 2021
> a valid employment relationship must be established by a Tax file number (TFN) declaration or STP payroll event.
Provide your employee's full name, date of birth and either their TFN or address to submit the request.
The employee will be notified when a request has been made for their stapled fund account. This service is monitored for fraudulent activity.

Stapled fund account requests Request >

No requests have been made

Step 3 - Receive details of the employee's stapled fund

Date requested	Employee	Status	Fund ABN	Member account number
DD/MM/YYYY	Employee A	Stapled fund	1234567891 USI 12123456799123	12123456799

The employee has a stapled super fund account
Contributions are to be made to the account provided.
ATO receipt ID 123456789

Super fund details		Employee details	
Fund type	AFRA	Date of birth	31/12/1972
Fund name	ABCSuper	TFN	123456789
Product name	Balanced Growth	Postal address	Employee A address SUBURB, STATE, POST CODE

Step 2 - Search and wait for the system to retrieve employee's stapled fund

Stapled fund account requests Request >

Processing [Refresh](#) to check status. If the status is still processing, check again later.

Date requested	Employee	Status	Fund ABN	Member account number
DD/MM/YYYY	Employee A	Processing		

What are the impacts of this change?

Where employees are not making a choice of fund, employers must consider:

- The **increased administrative burden** it creates on payroll and onboarding teams, especially for high volumes of recruitment.
- The impacts to **streamlined/online onboarding** processes that are currently in place.
- The impact this may have on **your superannuation offering** as a core pillar of your employee benefits strategy.

How do agents work with this and act on behalf of employers?

If employers choose for agents to act on their behalf in relation to this requirement, agents are able to request stapled fund information on behalf of their employer clients via [Online Services for Agents](#) from **1 November 2021**.

Is the ATO making changes to other Superannuation Guarantee Forms or processes as a result of this measure?

There will be no change to the requirement to offer eligible employees a choice of fund or lodge a Superannuation Guarantee Charge Statement if superannuation or choice of fund obligations are not met. Where an employee chooses a superannuation fund, there will be no extra requirements of the employer.

The ATO is currently reviewing all forms and web content in relation to the Superannuation Guarantee Charge to determine what changes need to be made from **1 November 2021**.

Failure to adhere to the rules in relation to requesting a stapled superannuation fund for employees that have not made a choice will mean that an employer will have a choice shortfall. We expect that this would be reported in their Superannuation Guarantee Charge Statement.

However, within the law there is the provision for this choice shortfall to be reduced at the discretion of the Commissioner in certain circumstances. We are currently drafting Legislative Instruments in relation to the use of that discretion and once finalised will provide more guidance within our web content.

How long will it take to process a Stapled Superannuation Fund Request?

The ATO expects employers should have a result within minutes when using [ATO Online](#).

Where a **bulk upload** is requested, the ATO has suggested it will take up to a few days to provide the employee fund details.

How many requests can I do at once?

The number of requests that can be made through [ATO Online](#) is unlimited.

What if I don't have access to the ATO's Online services?

ATO contact centre staff will be able to assist over the phone.

Can a restricted fund be a stapled fund?

Yes, often superannuation products are listed as restricted, however this may only apply to new members or particular employers.

When will the ATO publish more information?

The new stapled superannuation fund web page went live on **11 August 2021**, which can be found [here](#).

I have an obligation under the Fair Work Act 2009 to pay to a particular superannuation fund. Where does the Stapled Superannuation Fund obligation sit in hierarchy to that obligation? What legislation provides for this?

Section 32C of the *Superannuation Guarantee (Administration Act) 1992* (SGAA) provides for contributions that satisfy the choice of fund requirements, and the hierarchy of such provisions. In most cases, the following hierarchy is applied where an employer needs to make their contributions in order to satisfy the choice of fund requirements:

1. A chosen fund for the employee (subsection 32C(1) of the SGAA)

2. A contribution to a stapled superannuation fund advised by the Commissioner (subsection 32C(1A) of the SGAA)
3. A default fund or a fund that otherwise meets the choice of fund obligations (subsection 32C(2) of the SGAA).

There are some instances, which the ATO expects to be in the minority, where an employer can meet the choice of fund rules without first requesting a stapled superannuation fund from the Commissioner. This includes contributions under certain agreements and workplace determinations listed in subsection 32C(6) of the SGAA, excluding contributions under an enterprise agreement or workplace determination made before 1 January 2021.

The ATO can only provide advice in relation to Acts that we have the responsibility for administering. It is important for all businesses to ensure that they are meeting their obligations under the SGAA along with other workplace obligations. The ATO have reached out to Fair Work to discuss how the new stapled superannuation fund rules will interact with their processes, and how the ATO may be able to assist employers to understand their responsibilities. The ATO will update its web content in line with any conversations held with Fair Work.

What happens if I attempt to pay to a stapled superannuation fund notified by the Commissioner and the funds bounce back?

If the stapled superannuation fund account cannot accept contributions for the employee, you should make another request for the employee's stapled superannuation fund via [ATO Online](#). If the same stapled superannuation fund account is returned, you then need to call the ATO on **13 10 20** to obtain an alternative stapled superannuation fund account or advice that contributions can be made to your default fund (if there is no alternative fund).

Can an employer see what superannuation choice information an individual has lodged with the ATO through ATO Online for individuals?

No. The ATO will respond to a stapled superannuation fund request to disclose an employee's information (including chosen fund information) to an employer, or an intermediary acting on behalf of an employer.

What penalties can apply if I don't request a stapled superannuation fund for my employees, or request a stapled superannuation fund but don't make payment to the fund provided?

If you do not pay an employee's minimum superannuation guarantee amount on time **and to the right fund**, you must pay the superannuation guarantee charge (SGC). The SGC is more than the superannuation you would have otherwise paid to the employee's fund and is not tax deductible.

A failure to comply with the choice of fund rules, including the new stapled superannuation fund amendments, when making superannuation guarantee contributions for employees may result in an increase of an employer's individual superannuation guarantee shortfall for a quarter (known as the choice shortfall). An individual superannuation guarantee shortfall may also result where an employer does not make a contribution to a fund for an employee on time because the stapled superannuation fund notified by the Commissioner did not accept the contribution.

Choice liability penalty is an additional charge/penalty within the calculation of SGC. A choice breach (including failing to meet the rules in relation to stapled superannuation funds) is a superannuation contribution made on time to a non-choice fund. The result of such a breach, raises an SGC obligation.

The superannuation guarantee charge is made up of:

1. the superannuation guarantee shortfall, made up of:
 - a. superannuation calculated on salary and wages (including any overtime) (*as worked out in accordance with subsection 19(1) of the SGAA*)
 - b. any choice liability, based on the shortfall and capped at \$500 per notice period (*as worked out in accordance with subsection 19(2A) or subsection 19(2B) and section 19A of the SGAA*)
2. nominal interest of 10% per annum (accrues from the start of the relevant quarter) (*as worked out in accordance with section 31 of the SGAA*)
3. an administration fee of \$20 per employee, per quarter (*as worked out in accordance with section 32 of the SGAA*).

Is there any discretion available in relation to the penalties applicable? Is there a transitional approach?

The Commissioner has the discretionary power to reduce an individual superannuation guarantee shortfall that may result from an employer:

- not checking if an employee has a stapled superannuation fund,
- not correctly acting on the information obtained when making contributions to a fund for an eligible employee that doesn't choose a fund, or
- making late contributions to a fund because the stapled superannuation fund notified by the Commissioner did not accept the contributions.

The Commissioner is required to make guidelines that must be considered by case officers when deciding whether or not to exercise these discretions.

The guidelines for the exercise of each discretion have been outlined in two draft legislative instruments which were released on 2 August 2021 for a two-week consultation period.

They specify the Commissioner will provide employers with education, help and assistance in the first instance of non-compliance with the stapled superannuation fund requirements between **1 November 2021** to **31 October 2022**.

• Superannuation Guarantee (Administration) - choice of fund - written guidelines for the reduction of an increase in an employer's individual superannuation guarantee shortfall determination 2021

- **SPR 2021/D1 | Legal database (ato.gov.au)**

• Superannuation Guarantee (Administration) - stapled fund - guidelines for the reduction of an employer's individual superannuation guarantee shortfall for late contributions due to non-acceptance by notified stapled fund determination 2021

- **SPR 2021/D2 | Legal database (ato.gov.au)**

We're here to help

To ensure all your employees have the necessary information about your superannuation arrangements to enable them to make an informed choice about their fund and achieve their future financial goals, please visit beamconnect.com.au/stapling or call your payroll provider for further assistance.