

Legal Report May 2019

[Insurance](#)[Financial Planning](#)[Retirement](#)[Investments](#)[Wealth](#)

Newsletter of Sanlam Employee Benefits: Legal

1. Draft Conduct Standard on minimum skills and training requirements for trustees

Section 7A(3) of the Pension Funds Act provides that a trustee must attain such levels of skills and training as may be prescribed by the Financial Sector Conduct Authority (FSCA), within 6 months from the date of becoming a trustee. A trustee must maintain such levels of skills and training throughout his/her term of office. The FSCA has published a draft Conduct Standard prescribing the minimum skills and training requirements for trustees of retirement funds.

The draft Standard proposes that attaining certification of the Trustee Toolkit, an online facility provided by the FSCA on the website www.trusteetoolkit.co.za will serve as the minimum skills and training requirement for trustees.

In terms of the draft Standard a trustee will have to complete:

- The Trustee Toolkit tutorials, case studies and initial assessments on the said website; and
- The Trustee Toolkit final assessment – this must be done under the supervision of the principal officer or chairperson of the board to ensure that it is completed without assistance.

The FSCA says the Toolkit is meant to develop skills and provide training and is currently not intended to be a form of qualification with a pass or fail outcome.

The Toolkit will provide trustees with basic knowledge relating to the legislative requirements and information on fund governance, the responsibilities and obligations of trustees towards the fund and its members, and guidance on what fit and proper conduct is deemed to be.

Trustees who attain certification will be required to complete additional modules as and when these are added to the Toolkit by the FSCA.

The draft Standard proposes that it will become effective on 1 January 2020. Trustees appointed before this date will be required to attain the certification by 30 June 2020. A person who has successfully attained the certification and is subsequently appointed to the board of a fund will not be required to complete the certification again.

In the event that a trustee is unable to complete the Toolkit within the prescribed time, he/she may apply to the FSCA for an extension.

Submissions on the draft Standard can be submitted to the FSCA by 4 July 2019. Sanlam will provide comments via industry bodies.

2. Last annual report of FSB

The last annual report of the FSB, which was replaced by the FSCA on 1 April 2018, covers the period between 1 April 2017 and 31 March 2018. According to the report, there were 5118 registered retirement funds in South Africa as at 31 March 2018, of which 1647 were active (i.e. received contributions for members and/or paid benefits).

Significant supervisory issues that were identified by the FSB include:

- Boards not properly constituted in terms of the Pension Funds Act or the fund rules;
- Administrators not adhering to their responsibilities outlined in the administration agreement;
- Failure by boards to monitor compliance with the provisions of the Pension Funds Act, especially with regard to payment of contributions (section 13A and regulation 33);
- Expenses and remuneration of trustees are very high;
- Funds are being managed in terms of unregistered rules;
- Failure by boards to timeously reapply for section 7B exemptions (e.g. the exemption required by umbrella funds from the requirement that members must have the right to elect 50% of the trustees);
- Failure by boards to timeously submit annual financial statements and valuation reports.