

LEGAL & REGULATORY UPDATE

PENSIONS AND SUPERANNUATION

INSIDE THIS EDITION

- IDR procedures
- ERF transition
- ATO transfers
- Pandemic data collection FAQ
- Early release scheme

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IN BRIEF

We finally saw the new **Internal Dispute Resolution** requirements, with ASIC releasing RG271 which contains enforceable obligations set to commence next year.

An old friend made an appearance, with ASIC issuing a revised version of **RG97** and the related legislative instrument in relation to **Indirect Fee and Cost** disclosure.

There were also plenty of important policy announcements, which relate to the timing of many planned measures being revised.

We also know that the **Retirement Income Review** report has been handed to government, but no idea what is in it yet. I'm keen to hear your best guesses though!

MAJOR UPDATES



Internal Dispute Resolution

30 July 2020
Regulatory Guide

[LINK TO DETAILS](#)

ASIC released a new **Internal Dispute Resolution** (IDR) regime which will apply to superannuation trustees from 5 October 2021. Regulatory Guide 271 *Internal dispute resolution* contains enforceable requirements which will replace the existing IDR regime (as described in RG165) for superannuation trustees. Key aspects of the new IDR regime include:

- Revising the **definition of a complaint** to include certain social media engagements, objections to proposed death benefit decisions, and remediation related grievances;
- **Reducing timeframes** for responding to complaints (generally 45 days, and 90 days for death benefit related disputes);
- Defining the information that must be included in **written IDR responses**;
- Setting new timeframe requirements for **customer advocate reviews** of appeals against IDR decisions; and
- Providing guidance about how firms can **deal with representatives** who are not acting in consumers' best interests.

ASIC made [ASIC Corporations, Credit and Superannuation \(Internal Dispute Resolution\) Instrument 2020/98](#) to give effect to the enforceable IDR standards and requirements. In the coming months ASIC will conduct consultation on the IDR data reporting regime which was recommended by the *Ramsay Review into dispute resolution and complaints framework* and passed into legislation in 2018.

Superannuation trustees should complete an initial assessment on the activities required to transition to the new regime. The new regime is likely to represent a significant change for most trustees.



ERF Transition

27 July 2020
Policy announcement

[LINK TO DETAILS](#)

Treasury announced that it intends to amend the *Treasury Laws Amendment (Reuniting More Superannuation) Bill 2020* which is before the Senate as part of its July Economic and Fiscal Update. The amendments will seek to:

- defer by 12 months the start date of the measure that prevents superannuation funds transferring new amounts to ERFs;
- defer the date by which ERFs are required to transfer accounts below \$6,000 to the ATO to 30 June 2021; and
- defer the date by which ERFs are required to transfer remaining accounts to the ATO to 21 January 2022.

The deferral is necessary due to the Bill not being passed before the commencement date of some of the provisions.

Superannuation trustees should revise their transition planning to account for the revised dates and monitor the progress of the Bill once Parliament sits.



ATO Transfers

27 July 2020
Policy announcement

[LINK TO DETAILS](#)

Treasury announced that Government intends to pass laws allowing all superannuation trustees to voluntarily transfer amounts to the ATO where the trustee believes it is in the best interests of that member.

The changes would be sought through amendments to the [Treasury Laws Amendment \(Reuniting More Superannuation\) Bill 2020](#) which is before the Senate, and assist superannuation trustees in circumstances such as where:

- the account balance is low, and it is uneconomical for it to be maintained;
- a person cannot continue to be a member of the fund – for example a corporate super plan where a member has ceased employment with a sponsoring employer and has not provided payment instructions;
- there are remediation amounts with respect to an exited member where the benefit must be preserved within the super system, but the trustee is unable to contact the former member; and
- a superannuation fund is being wound-up and a member has not provided directions as to where their benefit is to be rolled over.

Superannuation trustees should consider whether it is appropriate to make any policy (and disclosure) amendments which may be required in relation to transfers to the ATO. Consideration may also be given to these changes for any of the specific scenarios listed above where the option may be relevant.



Early Release Scheme

23 July 2020
Update

[LINK TO DETAILS](#)

Treasury announced that it intended to extend the end date of the Coronavirus-related Early Release Scheme as part of its *Economic and Fiscal Update*.

The measure would extend the application period from 24 September 2020 to 31 December 2020 to increase the scope for individuals who may still be financially impacted by the pandemic and related restrictions.

It is expected that an Act of Parliament will be required to give effect to the extension, as the existing scheme was limited to a period of six months after the passage of the *Coronavirus Economic Response Package Omnibus Act 2020*.

Superannuation trustees should plan for financial and operational impacts of the extension of the scheme and monitor the progress of the required legislation.



Economic & Fiscal Update

23 July 2020
Update

[LINK TO DETAILS](#)

The Treasurer delivered the *Economic and Fiscal Update* with several relevant superannuation policy timing changes announced:

- **Early release:** The Government is extending the application period for the early release scheme from 24 September 2020 to 31 December 2020 to increase the scope for individuals who may still be impacted by COVID-19;
- **Deferrals and Revised Start Dates for Superannuation Measures:** Along with several deferrals that were previously announced, such as the increase of maximum number of allowable members in self-managed superannuation funds and small APRA funds and the calculation of funds' exempt current pension income, the Update confirmed the deferral of the start date of the Retirement Income Covenant to 1 July 2022 the and changes to the [Treasury Laws Amendment \(Reuniting More Superannuation\) Bill 2020](#) relating to ERFs.

Superannuation trustees should remain prepared to continue with early release measures until the end of the calendar year and remain apprised of the ERF Bill.



Parliamentary Sitings

18 July 2020
Parliamentary
business

[LINK TO DETAILS](#)

The Government has cancelled the next sitting fortnight of Parliament, which was scheduled to begin on 4 August, due to the escalation of coronavirus in parts of the country. **Parliament will now resume on 24 August** instead.

There are four superannuation related bills currently in Parliament:

- [Treasury Laws Amendment \(Reuniting More Superannuation\) Bill 2020](#)
- [Treasury Laws Amendment \(More Flexible Superannuation\) Bill 2020](#)
- [Treasury Laws Amendment \(Your Superannuation, Your Choice\) Bill 2019](#)
- [Family Law Amendment \(Western Australia De Facto Superannuation Splitting and Bankruptcy\) Bill 2019](#)

Superannuation trustees should note the status of these Bills, and revise any implementation planning to ensure that adequate resources are in place to implement if passed into law.



TECHNICAL CHANGES AND UPDATES



Indirect Fees & Costs (RG 97)

24 July 2020
Legislative Instrument

[LINK TO DETAILS](#)

ASIC released an amended [RG 97 Disclosing Fees and Costs in PDSs and periodic statements](#) and registered [ASIC Corporations \(Amendment and Repeal\) Instrument 2020/579](#). The key changes include:

- amending the definition of “**transaction costs**” confirming that performance fees are not included in the definition of transaction costs and supporting performance fees appearing in a new dedicated line item in the fees and costs summaries and examples of annual fees and costs;
- amending the **transition arrangements** in relation to PDSs in response to COVID-19, providing that PDSs given on or after 30 September 2022 must comply and issuers have the ability to elect to apply the new requirements from 30 September 2020 (there is no such change for periodic statements);
- amending the definition of “**excluded transactional and operational costs**” to confirm that there is no intention to change the existing provisions concerning identification and calculation of derivatives costs;
- providing an exemption from having to provide a **significant event notice** under section 1017B of the *Corporations Act 2001* if a material change in fees and costs results merely from updating the calculation and presentation of fees and costs to meet the requirements of the Indirect Fees & Cost requirements the first time; and
- amending the wording of the required “**Consumer Advisory Warning.**”

Importantly, the [transitional version of RG 97](#) (released March 2017) continues to be relevant during the transition period.

Superannuation trustees, especially those electing to apply the updated requirements from 30 September 2020, should review the technical amendments to ensure compliance. Processes for the calculation of fees and costs should be updated to ensure the changes are accommodated.



Electronic AGMs & Document Execution

31 July 2020
Announcement

[LINK TO DETAILS](#)

Treasury announced that it intended to extend the existing exemption under the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* which ensures that companies and other entities that are required to or wish to hold a meeting, such as an Annual General Meeting (AGM), may do so using technology rather than face-to-face meetings.

The Determination enables a quorum, votes, notices and the asking of questions to be facilitated electronically. The Determination also allows for meeting information to be circulated and accessed electronically.

The Determination alters the operation of section 127 of the *Corporations Act* to give certainty that when company officers sign a document electronically, the document has been validly executed.

Superannuation trustees should plan for any AGM of the trustee company that was planned to occur in the next six months and adopt appropriate measures to enable the meeting to occur electronically.



ASIC Technical Amendments

21 July 2020
Legislative
Instrument

[LINK TO DETAILS](#)

ASIC made *ASIC Corporations (Amendment and Repeal) Instrument 2020/579*. In addition to making the minor amendments to *ASIC Corporations (Disclosure of Fees and Costs) Instrument 2019/1070* in relation to fees and costs disclosure, as mentioned above in relation to RG 97, the instrument also:

- amends an outdated reference in the definition of "variable choice part" in notional subsection 1015DA(9) as modified by ASIC Class Order [CO 12/415], which provides flexibility in how in-use notice information is provided to ASIC for employer-sponsored superannuation products;
- repeals ASIC Class Order [CO 13/1420] which granted interim relief to superannuation trustees from the requirement to separately report the amount of low income superannuation contributions in a period statement (the relief applied to reporting periods that ended on or before 30 June 2015); and
- repeals *ASIC Corporations (Urgent Superannuation Advice) Instrument 2017/530*, which granted interim relief to financial advisers from the timing requirements relating to the giving of Statements of Advice in the period up to 1 July 2017.

Superannuation trustees should note the changes and review the ASIC instrument.



Total and Permanent Disability Claims

27 July 2020
Initiative Extended

[LINK TO DETAILS](#)

The Financial Services Council (FSC) announced the extension of its TPD claims initiative until 1 January 2021. In May, the FSC announced the initiative on behalf of participating life insurance member companies to ensure that if people lose their job, are stood down or have reduced working hours due to COVID-19, until 27 September 2020, this will not affect their total and permanent disability (TPD) cover if they make a claim. Claims will be assessed based on work arrangement as at 11 March 2020 (the date when COVID-19 was declared a pandemic).

Eligibility criteria requires that the person was working in their normal capacity on 11 March 2020; have had reduced working hours or lost their job due to COVID-19 since 11 March 2020; become disabled as a result of illness or injury between 11 March and 27 September 2020. TPD cover must be maintained at the time of total and permanent disability and a completed claim must be submitted on or before 1 January.

Superannuation trustees holding relevant policies with participating life insurers should ensure that the claims management functions is aware of the extension and initiative.



GUIDANCE AND POLICY



Strategic Planning and Member Outcomes

23 July 2020
APRA Letter

[LINK TO DETAILS](#)

APRA wrote to RSE licensees to remind them of the two new key obligations relating to the ongoing focus on **improving member outcomes**. Albeit encouraging licensees to engage early with APRA on the design of their **Business Performance Review (BPR)** and **outcomes assessment**, it has seen a low take-up of the offer and voiced concern that the lack of trial outcomes assessments being shared may be indicative of a lack of preparedness by the industry.

The first BPR must be completed by 31 December 2020, and according to APRA to satisfy this requirements, RSE licensees will need to consider the design of their products, based on analysis using cohorts and objective benchmarks determined by the RSE licensee, and determine whether the business is being operated in a way that supports delivery of appropriate member outcomes. This includes how RSE licensees will respond to recent changes in policy settings and the impacts arising from the pandemic.

The first annual outcomes assessment must be completed by the end of February 2021, with results published within 28 days. The assessment requires the RSE licensee to conclude whether members' financial interests are being promoted in the product they hold. APRA has asked licensees, in reflecting on the design of their products, to consider:

- whether MySuper products meet the objective of simplicity and cost efficiency; and
- whether choice products be simplified and consolidated.

APRA also reminded licensees that the quality of the BPR and outcomes assessment relies on the breadth and accuracy for data held and the capacity and capability to use it.

Superannuation trustees should carefully review APRA's letter and review their progress on the BPR and outcomes assessment design and implementation, taking into consideration APRA's guidance. Additionally, now more than ever, trustees should focus on their data to determine if it is appropriately collected, stored and organised so as to allow for efficient and valuable use.



Pandemic Data Collection

22 July 2020
FAQ

[LINK TO DETAILS](#)

APRA published frequently asked questions providing guidance to superannuation trustees on **Pandemic Data Collection (PDC)** requirements in response to COVID-19. The FAQ covers general information, monthly and quarterly reporting, foreign currency exposure and hedging, investments, member switching, ERI payment demographics and insurance cancellation.

APRA intends to publish PDC data at the industry level. The first submission was due 31 July 2020 capturing the April, May and June 2020 reporting periods in SRF 921.0 (monthly form), the June 2020 reporting period in SRF 921.1 (quarterly form) and the April 2020 reporting period in SRF 921.2.

Following this initial collection, the SRF 921.0 will be due on the 15th business day following the end of each month and the SRF 921.1 will be due on the 15th business day following the end of the quarter.

Superannuation trustees should ensure that procedures are in place to ensure compliance with the reporting requirements.



ASIC Update

27 July 2020
Update

[LINK TO DETAILS](#)

ASIC provided an update of its changes to its regulatory work and priorities to allow it to focus on the impact of COVID-19, including the following matters relating to superannuation:

- noting it will continue to monitor the appropriateness of the temporary no-action letter to superannuation trustees providing personal advice to members about early access to superannuation under specified conditions;
- deferring the first reporting date for portfolio holdings disclosures, recognising that current conditions may make it difficult for trustees to prioritise the development of appropriate disclosures;
- not intending to defer the requirement to hold annual member meetings for superannuation funds or provide relief at this time. However, noting it will closely monitor conditions and revisit if needed;
- publishing a report on insurance in superannuation and improving insurance outcomes for consumers by December 2020; and
- deferring public communication of the industry-level findings on trustee oversight of advice fee deductions for six months.

Superannuation trustees should note these changes as part of their regulatory change planning function.



The role of super funds during COVID

3 July 2020
ASIC Article

[LINK TO DETAILS](#)

ASIC's Superannuation Senior Executive Leader discussed the regulator's focus and what it expects from industry in the current environment. Key points:

- Supporting members through good communication specifically around early release modelling (ensuring all estimates are in today's dollars); disclosure requirements where members have a zero-balance due to early release; and the potential loss of insurance. See [ASIC's report on PYSP communications](#).
- Providing financial advice (with ASIC noting that it is undertaking surveillance work to check that the advice relief measures are serving the interests of consumers) and helping protect members from scams through vigilance and sharing of intelligence with regulators.
- Delivering for Australians by not being complacent and reflecting on the potential of going beyond complying with prescriptive legal requirements, opportunities arising out of recent member interactions (utilising behavioural data, and guiding principles in making difficult decisions and compromises).

Superannuation trustees should review the article with a view towards what they are already doing and what improvements can still be done.



AFCA Case Load

20 July 2020
AFCA Report

[LINK TO DETAILS](#)

The Australian Financial Complaints Authority (AFCA) released its **Financial Year 2019-20 Snapshot**, which reported that more than 80,000 complaints in the last 12 months had been lodged and \$258.6 million in compensation and refunds made.

People made 80,546 complaints to AFCA between 1 July 2019 and 30 June 2020. This is a 13.7% increase in monthly complaints compared to the last financial year (FY18/19).

AFCA resolved 78% of cases, with a majority being settled in 60 days or less. 73% of complaints were settled by agreement or in favour of the complainant, with banks being the most complained about financial institution.

Superannuation trustees should ensure that management and the complaints handling function reviews the report and is aware of the themes and trends described in the report.



AFSL Financial Resources Requirement

2 July 2020
ASIC Media Release

[LINK TO DETAILS](#)

ASIC issued a temporary no-action position for Australian financial services (AFS) licensees in relation to potential breaches of the financial resource requirements that arise from recent changes to the accounting treatment of lease assets.

Following the introduction of accounting standard AASB 16 *Leases* (AASB 16), all leases are now reflected on the balance sheet of a lessee by way of a lease liability *and* a right-of-use asset. For the purposes of applying certain financial resource requirements to an AFS licence, the right-of-use asset may be an intangible asset.

Some AFS licensees may face difficulty in complying with their financial requirements because intangible assets (excluding deferred tax assets) are not included in satisfying such requirements.

ASIC announced that it plans to consult in the 2020-21 financial year on proposals to change the financial resource requirements to enable an AFS licensee to include a right-of-use lease asset when calculating whether it meets its financial resource requirements.

ASIC indicated that the no action position would apply until further notice.

Superannuation trustees that rely on lease assets in satisfying adequacy of financial resource requirements should assess the legal risks of the change and ASIC's position.

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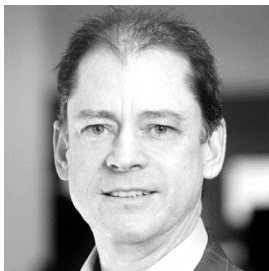
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If you have any questions or need assistance, you can contact us directly via the details below:



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