

LEGAL & REGULATORY UPDATE

PENSIONS AND SUPERANNUATION

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- Your Super Your Choice
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- Early release scheme extension

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IN BRIEF

Ongoing conjecture in relation to the yet to be seen **Retirement Income Review** findings and what it might mean for the legislated increases to the rate of **superannuation guarantee** continue to loom.

However, Parliament was able to pass the **Your Super, Your Choice Act** and an extension of the **JobKeeper** program and **Early Release Scheme**. Legislation to extend the maximum allowable membership of **SMSFs to six** was also introduced.

We do still however have a couple of important Bills still in Parliament, with the **Reuniting More Superannuation** and **More Flexible Superannuation Bills** failing to make it onto the Parliamentary agenda.

The first signs that APRA is picking up its pre-pandemic policy agenda again, with the **Data Transformation Project** recommencing and its policy priorities outlined for the coming months.

As usual, there were plenty of **technical yet important** updates to get across!

COMMONWEALTH PARLIAMENT



Your Super Your Choice

25 August 2020
Royal assent

[LINK TO DETAILS](#)

The **Treasury Laws Amendment (Your Superannuation, Your Choice) Act 2019** passed both Houses and received royal assent. The Act amends the **Superannuation Guarantee (Administration) Act 1992** to enable employees under **new workplace determinations or enterprise agreements** (made on or after 1 January 2021) to exercise **choice of superannuation fund** for their compulsory employer contributions.

The Bill was amended in the Senate, requiring that APRA complete a review into the operation of the amendments within 30 months of its commencement with the purpose to identify any unintended consequences of the amendments on the operation of defined benefits schemes, including their ongoing viability and profitability, and consider whether the amendments are necessary to rectify any unintended consequences.

QMV Legal recommends that superannuation trustees assess the extent of any impact, and the effect of the changes on future member flows and ensure financial modelling accounts for any such changes. Trustees may also consider ensuring that contributing employers affected are aware of the changes.



Jobkeeper

1 September 2020
Legislation

[LINK TO DETAILS](#)

The *Coronavirus Economic Response Package (Jobkeeper Payments) Amendment Act 2020* passed both houses and received Royal Assent. The Act extends the JobKeeper scheme to 28 March 2021 (previously to end on 31 December 2020).

The [key changes](#) as announced by the Government include:

- From 3 August 2020 the relevant date of employment for an eligible employee will move from 1 March to 1 July 2020; and
- Post 28 September 2020, organisations will only have to demonstrate they have met the relevant decline in turnover in the previous quarter.

The *Superannuation Guarantee (Administration) Amendment (Jobkeeper Payment) Regulations 2020* which provided that salary or wages that do not relate to the **performance of work** and are only paid to an employee to satisfy the wage condition for getting JobKeeper payment are excluded salary or wages for the purposes of calculating the SG Charge Shortfall Amount are likely to remain.

Superannuation trustees should note the extension and adjustments, however the superannuation guarantee operation will otherwise remain unchanged.



SMSF Members

2 September 2020
Legislation

[LINK TO DETAILS](#)

The *Treasury Laws Amendment (Self Managed Superannuation Funds) Bill 2020* was introduced to Parliament to legislate the **increase of allowable members in an SMSF from four to six**, as initially announced in the 2018-19 Budget.

The Bill seeks to amend the "self managed superannuation fund" definition in the SIS Act and other provisions that currently apply to small superannuation funds with fewer than five members.

The amendments also update the sign off requirements in the SIS Act about the accounts and statements that the trustees of an SMSF must ensure are prepared for each income year.

QMV Legal recommends that superannuation trustees consider the potential impact on member transfers to SMSFs when completing their strategic and business planning activities.



Parliamentary Sittings

31 August 2020
Parliamentary
business

[LINK TO DETAILS](#)

Commonwealth Parliament sat between 24 August and 3 September, while some superannuation legislation was made, four superannuation related bills remaining before Parliament:

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

Parliament is next scheduled to sit between 6-8 October.

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.



REGULATIONS & LEGISLATIVE INSTRUMENTS



Early Release

3 September 2020
Legislative Instrument

[LINK TO DETAILS](#)

Treasury made *Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations (No. 3) 2020* (Cth), which extends the deadline by which applications must be made for coronavirus related early release from 24 September 2020 to 31 December 2020.

The Regulations build on the amendments introduced via the *Coronavirus Economic Response Package Omnibus Act 2020*, which extended grounds of early release to individuals adversely affected by the coronavirus.

Temporary residents were only entitled to make a single application during the 2019-20 financial year, and the extension is therefore not applicable.

QMV Legal recommends that superannuation trustees revise modelling for benefit payments, administrative arrangements, and communications with members to ensure the extension is effectively managed.



Derivative Transactions Reporting

28 August 2020
Proposal

[LINK TO DETAILS](#)

ASIC has initiated a project to review and update the *ASIC Derivative Transaction Rules (Reporting) 2013*.

The changes are expected to focus on **implementing the harmonised international standards** for transaction, product and party identifiers and transaction data elements. ASIC has however indicated that they will also complete a fit for purpose review of:

- consolidating reporting exemptions within the rules
- coverage scope of reporting entities and transactions
- delegated reporting provisions.

ASIC has also included current working documents of proposals regarding the exemptions set to expire on 30 September 2020.

Superannuation trustees should review the current working papers and note ASIC's consultation timeline. The changes are likely to only affect superannuation trustees with derivative transaction reporting obligations which aren't satisfied by counterparty compliance.



Market Linked Pensions

31 August 2020
Guidance

[LINK TO DETAILS](#)

In June 2020, the ATO provided CRT Alert 031/2020 in relation to the *Treasury Laws Amendment (2019 Measures No 3 Bill)*, which provided a new way to calculate the debit which arises in an individual's **transfer balance account** when a member **commutes a market linked pension** which is a capped defined benefit income stream. The alert noted that funds needed to review the information already reported to the ATO and consider whether it requires amendment in line with the legislation.

The ATO has now published updated guidance on calculating the value of the debit and noted that as a result the delayed issue it does not expect any funds to begin their retrospective reporting until November 2020 with the ATO providing additional guidance before the end of November as to when it would expect the retrospective reporting be completed by.

Superannuation trustees with market linked pensions should review the ATO's guidance and ensure that administration systems and accounting procedures are configured to account for the new calculation methods.



POLICY & GUIDANCE



APRA Prudential Policy Program

10 August 2020
Media Release

[LINK TO DETAILS](#)

APRA announced that it will recommence public consultations on select policy reforms and begin a phased resumption of the issuing of new licensed after putting these activities on hold in March and April, respectively. Policy initiatives will be limited to "high-priority prudential policy reforms" with the following items relevant superannuation:

- the cross-industry prudential standard for remuneration (CPS511);
- the prudential standard for insurance in superannuation (SPS250); and
- updated guidance on the sole purpose test.

It will also recommence its Superannuation Data Transformation project.

The 2021 policy program will be reviewed in light of the current environment and with a view to continuing to support the financial sector as it responds to COVID-19.

Superannuation trustees should review business plans in line with APRA's Prudential Policy Program to ensure readiness for further substantial prudential changes likely to require implementation in 2021.



APRA Data Transformation

28 August 2020
Consultation

[LINK TO DETAILS](#)

APRA released the final consultation package for Phase 1 of its **Superannuation Data Transformation** project which is intended to address the most urgent data gaps required to support APRA's activities.

The package contains topic papers on **Expense Reporting** (2 Oct), **Asset Allocation** (16 Oct), **Insurance Arrangements** (30 Oct) and **Fees and Costs** (13 Nov), in addition to the following draft reporting standards:

- SRS 101.0 Definitions for Superannuation Data Collections;
- SRS 251.0 Insurance;
- SRS 332.0 Expenses;
- SRS 550.0 Asset Allocation; and
- SRS 706.0 Fees and Costs Disclosed.

Formal written submissions close for each paper as identified above.

Superannuation trustees should consider assessing the impact of the proposed changes on existing data collection and reporting and make any resulting submissions to APRA.



SuperStream

10 August 2020
Alert

[LINK TO DETAILS](#)

The ATO issued CRT Alert 041/2020 confirming that it wrote to large superfund trustees to advise of ATO and APRA support for an **extension to the transition period** that funds have to move to version 3 of the SuperStream rollover message from 31 March 2021 to 30 September 2021.

The ATO also noted that APRA encourages trustees to comply with the requirements as soon as possible, although it does not expect failure to comply with these requirements to be reported as a breach prior to 30 September 2021.

Superannuation trustees should ensure that any transition projects being completed by software providers or administration service providers are aware of the extension.



APRA Corporate Plan

31 August 2020
Plan

[LINK TO DETAILS](#)

APRA published its 2020-2024 Corporate Plan, which has been updated to account for the impact of COVID-19. APRA's strategic roadmap as related to superannuation includes:

- **Maintaining financial system resilience:** A focus on liquidity and investment risk, defined benefit funds, vulnerabilities arising from loss of member accounts and changing member activity and operational resilience of key service providers. APRA will also collect data and monitor the impact of the early release scheme.
- **Improving member outcomes:** APRA will enhance the prudential framework, including prudential standards related to insurance, investment governance and operational risk. APRA's attention will also remain on enhancing data and insights and improving transparency and sustainability.
- **Transforming governance, culture, remuneration and accountability:** APRA will work with Government to extend the Financial Accountability Regime (FAR), finalise and implement CPS 511 *Remuneration*, develop a tool to benchmark and assess trends in risk culture by undertaking a risk culture survey for a pilot group of regulated institutions.
- **Improve cyber resilience across the financial system:** APRA has been developing its Cyber Security Strategy and will work on translating it into actionable program of work and mobilise resources for execution.

Superannuation trustees should note the corporate plan, as it relates to APRA's policy and supervision priorities.



ASIC Corporate Plan

31 August 2020
Plan

[LINK TO DETAILS](#)

ASIC published its Corporate Plan for 2020-24. ASIC's focus as related to superannuation will include:

- Generally, across all sectors, the monitoring, through a new ASIC-wide working group, false and misleading advertising and cyber misconduct;
- Monitoring the impact of COVID-19 on the super insurance offerings, reviewing a sample of policy documents for insurance in super and trustee communication about insurance, and engaging with AFCA, APRA and trustees.
- Conducting surveillance to ensure ASIC temporary relief measures related to advice about the early release scheme is not abused and taking enforcement action where necessary.
- Conducting a thematic surveillance of trustee communications to members about the impact of COVID-19 and resultant legislative measures on superannuation funds and member benefits and taking enforcement action as appropriate along with publishing communications about the findings of its surveillance activity.

Superannuation trustees should review ASIC's guidance as related to insurance in super and member communications and ensure that product and communications teams are aware of the guidance.



AFCA Insurance Fact Sheet

20 July 2020
AFCA Report

[LINK TO DETAILS](#)

AFCA published a factsheet to answer some of the most common questions related to complaints about insurance premium increases.

The factsheet notes that:

- most insurance policies allow an insurer to increase premiums and as a result where trustee premiums increase the trustee can increase insurance premiums for its members;
- AFCA is receiving more complaints than usual about large insurance premium increases because of the Protecting Your Super changes and it attributes the increase in premiums to a decrease in number of insureds rather than trustees failing to properly insure their members;
- AFCA's power to consider complaints about premiums increases is limited to complaints about whether the premium increase was inadequately disclosed, misrepresented, incorrectly applied, or a breach any legal obligation or duty of the trustee or the insurer.

AFCA's factsheet also details the factors it considers in relating to the permitted categories of complaints related to premium increases.

Superannuation trustees should review the factsheet in conjunction with their any processes related to premium increases to ensure appropriate disclosure, application and compliance with obligations.



FinTech Sand Box

25 August 2020
Guidance

[LINK TO DETAILS](#)

ASIC released guidance related to the FinTech regulatory sandbox, which provides a 24-month exemption from 1 September 2020 from the AFSL requirements for testing financial services relating to financial products, including services which advise on insurance and superannuation.

To be eligible entities must meet the net public benefit test and the innovation test. Entities intending to utilise the enhanced regulatory sandbox must submit the appropriate form to ASIC and if ASIC confirms that minimum requirements are met, ongoing conditions such as complying with disclosure and conduct requirements, membership of AFCA and holding adequate professional indemnity insurance apply.

Superannuation trustees should consider whether the expanded FinTech sandbox provides an opportunity for testing member service technologies or partnering with member service technology providers.



ATO Super Match

5 August 2020
Alert

[LINK TO DETAILS](#)

The ATO alert 040/2020, which confirms the ATO wrote to trustees (further to the joint ATO and APRA correspondence issued on 19 May 2020 and subsequent consultation) to provide the updated SuperMatch terms and conditions of use and user guide.

Main changes include a requirement that customer verification be undertaken prior to SuperMatch being used, further clarity on ensuring only superannuation trustees' access SuperMatch, and ongoing obligations for trustees to ensure their connections remain compliance and periodically attest to that.

The ATO will commence reconnecting SuperMatch for approved trustees from 31 August 2020.

Superannuation trustees should note the changes and review processes to ensure they are compliant.



Financial & Regulatory Technology

2 September 2020
Interim Report

[LINK TO DETAILS](#)

The Chair of the Senate Committee on Financial Technology and Regulatory Technology tabled an interim report containing **32 recommendations**. The Chair referred to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Service Industry as showing a need for more competition in the sector.

Several recommendations referred to superannuation specifically including that the Australian Government should:

- expand the **Consumer Data Right** to include other financial services, starting with the superannuation sector as the industry would benefit from increased transparency and consumer functionality; and
- foster a culture where superannuation funds **invest more widely**, including in Australian start-ups, consistent with the sole purpose test.

Superannuation trustees should review the interim report for further insights into the recommendations and their potential future impact on trustee operations, particularly in relation to the possible extension of the CDR to superannuation trustees as data holders.



APRA Heatmap

21 August 2020
Guidance

[LINK TO DETAILS](#)

APRA released a new set of **frequently asked questions** concerning the release of the 2020 MySuper Product Heatmap in December 2020. Key takeaways include:

- In addition to showing outcomes delivered to MySuper member in investment performance and fees and costs, the 2020 Heatmap will provide **indicators of trends** in a trustee's operations relevant to the sustainable delivery of member outcomes.
- Investment performance and sustainability of member outcomes metrics will be based on data as at 30 June 2020 and fees and costs metrics on PDSs as at 1 October 2020.
- The Heatmap will include data received by APRA via D2A by 5 p.m. on 29 October 2020 and any updated received post this date will be included in the following publication of the 2021 MySuper Product heatmap planned for release in December 2021.

Superannuation trustees should review APRA's FAQ's and ensure any all data is submitted by the deadline.

ABOUT QMV LEGAL

QMV Legal is focused on providing pragmatic and expert legal advice which considers both the **nuance of superannuation law** and the commercial and operational objectives of superannuation trustees and providers.

Being **closer to the business** operations and technology of running a superannuation fund provides QMV Legal with a unique insight into the legal issues faced by superannuation funds.

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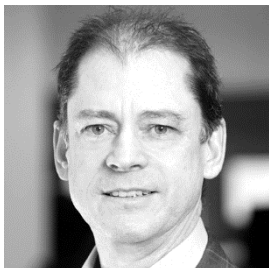
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QMV Legal provides an innovative legal and regulatory **subscription service for superannuation trustees** which includes pro-active, efficient, and client specific legal and regulatory change advice.

CONTACT US

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



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