

LEGAL & REGULATORY UPDATE

PENSIONS AND SUPERANNUATION

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- APRA data collection
- Privacy Act review
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- SCT Transition
- Regulator annual reports

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IN BRIEF

Following the **Commonwealth Budget** in early October, we saw the legislative and regulatory focus shift away from the pandemic pause and measures towards a growing list of change for 2021.

The review of the **Privacy Law** will be important for superannuation trustees to engage with and watch closely, while the proposed "**Measures for a Later Sitting**" Bill will address a number of technical and important issues such as the basis **for setting fees in MySuper products**, status of **PYSP/PMIF elections** upon SFT, and extending the second phase of the **Early Release Scheme** to New Zealand citizens.

We also saw some additional detail on the **wind up of the SCT** at the end of the year, **payment terms reporting**, and **annual reports** from both APRA and ASIC.

MAJOR UPDATES



Privacy Act

30 October 2020
Review

[LINK TO DETAILS](#)

The Attorney General has released the terms of reference and issues paper for a review of the *Privacy Act 1988*. The release comes after the announcement in December 2019 that the Government would conduct a review to ensure privacy settings empower consumers, protect their data, and best serve the Australian economy. The review takes account of and builds on the *Australian Competition and Consumer (ACCC) Digital Platforms Inquiry* final report published in July 2019.

The list of questions for consideration address the objectives of the *Privacy Act*; the definition of personal information; flexibility of the Australian Privacy Principles in regulating and protecting privacy; exemptions, notices of collection of personal information; consent to collection and use and disclosure of personal information; control and security of personal information; overseas data flows and third party certifications; and enforcement powers under the *Privacy Act* and role of the OAIC.

The deadline for submissions for the issues paper is 29 November 2020.

Superannuation trustees should review the issues paper and consider providing a submission, particularly around an expanded definition of personal information and possibility of stricter requirements for obtaining consent.



Electronic AGMs & Document Execution

21 September 2020
Legislative Instrument

[LINK TO DETAILS](#)

Treasury has released exposure draft legislation that seeks to make permanent and expand on changes related to virtual meetings and electronic document execution that were passed as a result of the COVID-19 pandemic.

Key features of the proposed new law include:

- Company documents may be executed using electronic means;
- Directors meetings, meetings of shareholders and members of registered schemes may be held using electronic means provided all persons have a reasonable opportunity to participate;
- Documents relating to a meeting may be provided electronically;
- Documents relating to a meeting may be signed electronically by using a method to identify the signatory and indicate the signatory's intention;
- The minutes of meetings of shareholders and members of registered schemes may be taken electronically, and the meeting book may be provided and kept electronically.

On 15 June 2020, the Government also announced that *Modernising Business Communications* will be a priority area for its Deregulation Taskforce. As part of this work, the Government will separately consult on how other Commonwealth legislation may be made technology neutral.

Public consultation closes on 6 November 2020.

Superannuation trustees should consider whether the changes create opportunities to promote efficiency by adopting measures and revising procedures where appropriate to account for virtual and electronic measures.



Transfer of Residual SCT Complaints

04 November 2020
AFCA Rules

[LINK TO DETAILS](#)

Following its public consultation, AFCA will submit its proposed amendment to the AFCA Rules to ASIC for approval and pending approval from ASIC anticipates that the Rules will be released in January 2021.

The proposed changes will allow AFCA to accept and consider complaints that are not resolved by the SCT before it ceases operations on 31 December 2020. The amendments also provide that:

superannuation amendments include amendments to the:

- AFCA will consider any complaints transferred from the SCT under the AFCA Rules that apply to superannuation complaints;
- Complaints that have not been finalised will enter AFCA's dispute resolution process at the stage most comparable to the stage the complaint reached at the SCT; and
- The SCT will transfer the complaint files to ensure all information previously provided to the SCT is available to AFCA.

AFCA will also be able consider any matters that are before the Federal Court on appeal from the SCT that are not finalised prior to SCT ceasing operations and require remittal back to be determined again or finalised in accordance with the Court's decisions.

Superannuation trustees should identify any complaints remaining with the SCT or appeals to SCT determinations currently before the Federal Court. Arrangements for the ongoing handling of these matters from 1 January 2021 should then be implemented where necessary.



APRA Data Collection

21 October 2020
Changes

[LINK TO DETAILS](#)

APRA updated the Early Release Initiative (ERI) and COVID-19 Pandemic Data Collection (PDC) reporting requirements for superannuation entities.

The ERI will continue weekly through to 31 January 2021. To accommodate the operational shutdown during the Christmas/New Year period APRA will require that data for the week ending 20 December 2020 is due on 23 December with a publication release on 6 Jan 2021 and all data for the weeks in the interim until the week ending 31 Jan 2021 due on 3 February 2021 with a publication release on 8 February 2021.

With respect to the PDC APRA has considered the data collections beyond 30 September 2020 and revised the data that will be required through 31 January 2020.

Superannuation trustees should review APRA's reporting requirements and its Frequently asked questions in relation to the Pandemic Data Collection to ensure reporting is aligned with the substantive changes to PDC requirements and deadlines for ERI.



SMSF Members

9 November 2020
Recommendation

[LINK TO DETAILS](#)

The Senate Economics Legislation Committee has recommended that the *Treasury Laws Amendment (Self Managed Superannuation Funds) Bill 2020* be passed. The Bill 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.

Opposition Senators have dissented suggesting the Senate should oppose the Bill's passage and the government should proceed with Commissioner Hayne's recommendation that there be a review of measures that have been implemented to improve quality of financial advice and consider adopting the reforms recommended by the Productivity Commission to create stronger safeguards on SMSF advice.

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



TECHNICAL CHANGES AND UPDATES



Payment Times Reporting

14 October 2020
Royal Assent

[LINK TO DETAILS](#)

The *Payment Times Reporting (Consequential Amendments) Bill 2020* received royal assent. The Bill establishes a Payment Times Reporting Scheme which requires businesses, including superannuation funds, with an annual total income of over \$100 million to biannually report on their payment terms and practices for their small business suppliers.

The objective of the legislation is to improve payment outcomes for small businesses by creating transparency around the payment practices of large business entities.

The new reporting requirements will be supported by a Payment Times Reporting Small Business Identification Tool to assist reporting entities in identifying their small business suppliers.

Superannuation trustees should review the Bill to determine the extent of their obligations to participate in the scheme and report data related to any small business service providers.



Measures for a later sitting

21 October 2020
Treasury

[LINK TO DETAILS](#)

Treasury released draft *Treasury Laws Amendments (Measures For A Later Sitting) Bill 2020* and *Treasury Laws Amendment (Miscellaneous Technical Amendments) Regulations 2020* that cover proposed minor and technical amendments to the Treasury portfolio laws. The amendments are intended to correct technical or drafting defects, remove anomalies and address unintended outcomes.

Relevant superannuation amendments include amendments to the:

- SIS Act section 29VA(9) MySuper charging rules to allow the trustee of a fund who offers a MySuper product to charge a greater number of differentiated investment fees to different subclasses of members who hold the MySuper product;
- SIS Act to allow the trustee of a successor fund to rely on elections made by members related to insurance as an election given to the trustee of the successor fund following a successor fund transfer;
- *Superannuation Unclaimed Money and Lost Member Act 1999* to provide that an account is not an inactive low balance account if the member has elected to maintain insurance on the account under the SIS Act;
- *Corporations Act 2001* to reflect appropriate references to the *Family Law Act 1975* as a result of amendments to be made by the *Family Law Amendment (Western Australia De Factor Superannuation Splitting and Bankruptcy) Bill 2019*;
- *Income Tax Assessment Act 1997* related to non-arm's length income, income stream tax deductions, no TFN successor fund tax offset, and superannuation benefits paid to the ATO; and
- SIS Regulations to ensure that permanent residents of New Zealand are eligible for early release of superannuation on compassionate grounds relating to COVID-19.

Responses to the consultation can be submitted up until 17 November 2020.

Superannuation trustees should remain aware of the amendments and consider whether there are any comments that should be included in a consultation response.



SCT Transition

28 October 2020
Bill introduced

[LINK TO DETAILS](#)

The *Treasury Laws Amendment (2020 Measures No. 4) Bill 2020* was introduced. The Bill seeks to amend the AFCA Act to facilitate the closure and any transitional arrangements associated with AFCA replacing the SCT.

The Bill provides for the transfer of records and documents from the SCT to ASIC as administrator which will respond to any freedom of information requests and prepare and disclose relevant documents to AFCA or the Deferral Court where necessary.

The Bill also provides for the remittal of matters on appeal by the Federal Court to AFCA and introduces rule-making power to allow the Minister to prescribe other matters of a transitional nature.

Superannuation trustees should identify any complaints remaining with the SCT or appeals to SCT determinations currently before the Federal Court. Arrangements for the ongoing handling of these matters from 1 January 2021 should then be implemented where necessary.



Data Transformation Project

27 October 2020
APRA FAQ

[LINK TO DETAILS](#)

APRA published frequently asked questions on its Super Data Transformation Project that cover Phase 1 – Expenses, Asset Allocation, Insurance Arrangements and Fees and Costs.

The FAQ covers how the data collected via draft SRS 706.0 compares to existing collections and makes clear that each fee and cost arrangement scheme available for MySuper and all choice product offerings must be reported as well as all standard and customised fee structures, including rebates.

With respect to insurance APRA proposes to collect more granular data to be used to inform its supervisory activity and efforts to improve member outcomes.

The FAQ also provides further information on key terms used in the draft standards.

Superannuation trustees should review the FAQ.



POLICY & GUIDANCE



Approval to own and control

15 October 2020
Guidance

[LINK TO DETAILS](#)

APRA issued a letter to superannuation licensees regarding controlling stake obligations after its review of the implementation the controlling stake requirements in Part 2A of the *Superannuation Industry (Supervision) Act 1993* which came into effect on 5 July 2019 revealed instances of non-compliance. APRA's letter reminds licensees that a failure to obtain APRA's approval prior to owning a controlling stake in an RSE licensee is a strict liability offer which may attract severe penalties.

APRA calls on licensees to take the following steps as a matter of priority:

- Identify if there has been any changes to the ownership of shares in the RSE licensee since 5 July 2019 in relation to which APRA approval has not been obtained;
- Obtain appropriate professional advice on the *Financial Sector (Shareholdings) Act 1998* ownership requirements if necessary and how they apply;
- Review the RSE licensee's constitution, shareholder deed and/or risk management framework to ensure the controlling stake requirements are incorporated; and
- Lodge a controlling stake application, if required.

APRA has updated the Application Form and Instruction Guide.

Superannuation trustees should prioritise taking the actions recommended by APRA where there has been any change in ownership of shares and/or a change in RSE licensee directorships.



Death benefit rollovers

9 October 2020
Guidance

[LINK TO DETAILS](#)

The ATO clarified how superannuation funds should report death benefit rollovers in light of *Treasury Laws Amendment (2019 Measures No 3) Act 2020* which amended the law retrospectively with effect from 1 July 2017 to ensure that any untaxed element determined in accordance with section 307-290 of the *Income Tax Assessment Act 1997* (ITAA 1997) is not included in the receiving fund's assessable income.

Where a dependant beneficiary rolls over a death benefit, the Commissioner's view is that there is an insufficient connection between any deductions claimed by the transferring fund and any lump sum benefits paid by the receiving fund from the dependant beneficiary's new pension interest for the section to apply to any subsequent payments.

The ATO has detailed how rollovers from a fully taxed superannuation fund and those from an untaxed or hybrid fund should be reported.

Superannuation trustees should review the ATO's guidance to ensure appropriate reporting related to death benefit rollovers. If such reporting is outsourced to a third-party administrator, the trustee should communicate the change.



Supervision Risk & Intensity Model

6 October 2020
Guidance

[LINK TO DETAILS](#)

APRA announced that it is commencing the roll-out of its new model for assessing the risks faced by banks, insurers and superannuation licensees which will replace the existing PAIRS and SOARS framework. The new model is called the Supervision Risk and Intensity Model (SRI Model) and its design features ensure greater elevation of non-financial risks whilst preserving the importance of financial resilience. It also introduces recovery and resolution considerations, and more systematically factors in the impact of the external environment on an entity's risk profile.

The transition from PAIRS and SOARS to the SRI Model commences in October 2020 and will be completed by June 2021. APRA foreshadows that the move to the SRI Model could lead to a change in the intensity of supervision APRA applies for some entities. APRA will advise entities of their SRI rating once the new risk assessment is completed.

Superannuation trustees should review [APRA's SRI Model Guide](#) and ensure they understand the new model and assess any impact on APRA's supervision approach.



APRA Annual Report

13 October 2020
Report

[LINK TO DETAILS](#)

APRA published its Annual Report for the 2019/20 financial year.

Key superannuation-related achievements included:

- Proposed revisions to SPS 250 *Insurance in Super*;
- SPS 51 and Prudential Practice Guide SPG 516 coming into effect;
- The publication of the MySuper heatmaps;
- CPS 234 *Information Security* coming into effect;
- The released draft of CPS 511: *Remuneration*; and
- New, rapidly developed data collections to provide insights on priority areas of focus.

Superannuation trustees should review the annual report to note the key measures that can be expected to be finalised in the next year where drafts have been issued by APRA.



AFCA Extension

16 October 2020
Guidance

[LINK TO DETAILS](#)

AFCA reminded firms that the six-month temporary time extension that came into effect on 16 April 2020 AFCA ends on 1 November 2020.

The extension gave consumers and financial firms (including superannuation trustees) a temporary nine-day extension to respond to complaints due to the COVID-19 pandemic. The extension applies to all complaints, including those relating to financial difficulty and is intended to be in place for up to six months.

The end of the extension means that from 1 November 2020, firms will have 21 days to respond to financial difficulty complaints and complaints that have already been through internal dispute resolution.

Superannuation trustees should review complaint handling procedures and processes to account for the end of the extension.



ASIC Annual Report

23 October 2020
Report

[LINK TO DETAILS](#)

ASIC published its Annual Report for the 2019/20 financial year.

Key superannuation-related items related to:

- The response to the COVID-19 pandemic, including ensuring that information provided in relation to early release of superannuation was accurate;
- Continued work on establishing ASIC as the primary conduct regulator in superannuation;
- ASIC's focus on conduct that contributes to potential member harm, as well as on promoting better member outcomes in the implementation of reforms;
- The identification and investigation of marketing campaigns based around the provision of "free" lost superannuation searches and consolidation services, resulting in the temporary removal of all access to SuperMatch while ASIC works with industry and government agencies to strengthen controls on access; and
- Report 655 *Review of member communications: Protecting Your Superannuation Package (PYSP) reform* that set clear expectations with respect to further PYSP communications and provided general guidance that trustees should consider when communicating with members in the future.

Superannuation trustees should review the annual report to note the key measures that can be expected to be finalised in the next year as well as insights into ASIC's regulatory focus.

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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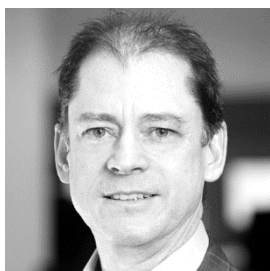
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CONTACT US

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



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