



QMV LEGAL

LEGAL & REGULATORY UPDATE

PENSIONS AND SUPERANNUATION

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IN BRIEF

The new year is already well underway, and yet again it looks like 2021 will be a busy year of legislative, regulatory, and policy change for the superannuation industry. Whilst it was somewhat of a quieter month, there were key developments in relation to APRA's:

- ongoing consultation about **insurance in superannuation**; and
- policy and **supervision priorities** for the next 12-18 months.

They are yet another indication of the ever-increasing level of assurances that are being required of Trustees in order to demonstrate that members' best interests are being served across all aspects of funds' products and services.

This is in turn continuing to put the focus on Trustees' ensuring that their governance structures are fit for purpose.

MAJOR UPDATES



Commonwealth Parliament

31 January 2021
Parliamentary Business

[LINK TO DETAILS](#)

There were no sitting days for the Commonwealth Parliament in January. There are however several superannuation related Bills still before parliament:

- *Financial Sector Reform (Hayne Royal Commission Response No. 2) Bill 2020*
- *Treasury Laws Amendment (More Flexible Superannuation) Bill 2020*
- *Treasury Laws Amendment (Reuniting More Superannuation) Bill 2020*
- *Treasury Laws Amendment (2020 Measures No. 4) Bill 2020*
- *Treasury Laws Amendment (Self Managed Superannuation Funds) Bill 2020*

Parliament will sit between 2-4 and 15-25 February. The draft legislation program indicates that the *Hayne Royal Commission Response No. 2) Bill* is the only will scheduled for debate in the first sitting week.

QMV Legal recommends that superannuation trustees closely monitor the progress of this legislation in February, with likely commencement dates for this legislation in the current year.



Insurance in Super

21 January 2021
Consultation

[LINK TO DETAILS](#)

APRA released a revised draft [Prudential Standard SPS 250 Insurance in Superannuation](#) and [Superannuation Practice Guide SPG250](#) for a second round of consultation. This follows feedback from industry in response to the initial consultation process which commenced in November 2019.

The key changes to SPS 250 from the initial consultation paper include:

- a revised **commencement date** of 1 January 2022;
- separating the **independent certification** requirements into two separate paragraphs – one for connected entities (related party insurers) and the other for 'priority and privilege' arrangements with non-related parties;
- recasting some of the independent certification requirements including '**the best interests of beneficiaries**', the signoff of legal and regulatory requirements, and narrowing the requirements for 'priority and privilege' arrangements;
- clarifying the **timing requirements** for obtaining an independent certification and for providing it to APRA, and amending the requirement for the independent review cycle from a biennial requirement to a triennial requirement; and
- clarifying that **related party arrangements** already in force on the effective date of the revised SPS 250 must seek an independent certification within 12 months of the effective date.

The updated draft **SPG 250**, for which the current published version dates to July 2013, contains guidance in the following areas:

- ease of **member opt-out** of insurance, including communication regarding the benefits and cost of the insurance;
- **maintenance of data** including data to support member outcomes assessments;
- the **covenant** 'to only offer or acquire insurance of a particular kind, or at a particular level, if the cost of the insurance does not inappropriately erode the retirement income of beneficiaries', particularly from the view of default members;
- independent certification requirements for related party insurers and **priority and privilege arrangements**, including examples of contractual terms that may constitute a priority or privilege; and
- the rules for **attributing a particular status** to a member, including that these rules must be fair and reasonable.

Submissions close 5 March 2021. It is anticipated the revised SPS 250 will come into effect from 1 January 2022.

Superannuation trustees should review the consultation paper and amended standard and guidance to determine the impact on current insurance arrangements.



AML/CTF Rules

27 January 2021
Consultation

[LINK TO DETAILS](#)

AUSTRAC has released a consultation paper in relation to proposed amendments to the *Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Rules*. The proposed changes are to support reforms to the AML/CTF Act made by the *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020* which was passed in December 2020.

Although broadly applicable, the proposed changes relevant to superannuation trustees include:

- Enhanced **customer due diligence requirements**, whereby customers must be identified before providing a designated service, except for very limited circumstances;
- Expanded circumstances where an entity can **rely on customer identification by another** reporting entity;
- Expanded **exceptions to tipping-off provisions** that allow information from suspicious matter reports (SMRs) to be shared with an external auditor, or offshore members of the same corporate or designated business group that are regulated by laws that give effect to some or all of the international Financial Action Task Force (FATF) recommendations.

AUSTRAC has notified that submissions in response to the consultation close on 11 March 2021.

Superannuation trustees should ensure they are familiar with the proposed changes and consider whether they wish to make a submission to AUSTRAC.



Transfer Balance Cap Indexation

27 January 2021
Announcement

[LINK TO DETAILS](#)

The ATO has confirmed an increase in the **general transfer balance cap** and **total superannuation balance limit** from \$1.6m to \$1.7m effective 1 July 2021.

Where an individual held a transfer balance account before 1 July 2021, a personal transfer balance cap will be calculated proportionally based on the highest balance of their transfer balance account. If the transfer balance account met or exceeded \$1.6m at any time before 1 July 2021, their personal transfer balance cap will not be increased.

Where an individual commences their first retirement phase income stream after 1 July 2021, the full \$1.7m transfer balance cap will apply.

The indexation of the total superannuation balance limit has implications for:

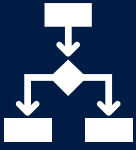
- eligibility to make non-concessional contributions;
- eligibility to claim a government co-contribution; and
- a spouse to claim the spouse tax offset for the individual.

Additionally, the defined benefit income cap, currently \$100,000 for most individuals, will be indexed to \$106,250.

Superannuation trustees should ensure that all material service providers are aware of this change and are taking appropriate action to update all systems, processes and fund documentation in preparation. Consideration should also be given to any online or other information provided to members in relation to the transfer balance cap to ensure this accurately reflects the changes.



TECHNICAL CHANGES AND UPDATES



Legislative Framework Law Reform

21 January 2021
Update

[LINK TO DETAILS](#)

The Australian Law Reform Commission (ALRC) has outlined its approach to the *Review of the Legislative Framework for Corporations and Financial Services Regulation*.

Having already confirmed the **Terms of Reference (ToR)** for the inquiry, the ALRC has outlined its intention to treat the ToR sub-topics as one overarching inquiry, rather than as three sub-inquiries on discrete topics. This approach has been undertaken given the inevitable overlap and interrelation between each topic.

Further, to maintain a level of consistency in scope throughout the inquiry, the ALRC has proposed that Chapter 7 of the *Corporations Act* be a focus point for each of the topics. However, issues and themes arising in other parts of corporations and **financial services law** will also be identified and captured to develop the ALRC's recommendations, ensuring the recommendations will have implications for legislative design well beyond Chapter 7 of the *Corporations Act*.

A **first interim report** focusing on the appropriate use of definitions in corporations and financial services legislation is due by 30 November 2021.

Superannuation trustees should remain apprised of the ALRC's progress and consider participating in relevant ALRC consultations.



CGT Rollovers

23 December 2020
Consultation

[LINK TO DETAILS](#)

The Board of Taxation has published a second consultation paper for review and feedback following its first round of consultation.

In December 2019, the Minister for Housing and Assistant Treasurer [announced](#) that the Board of Taxation (Board) would undertake a review of capital gains tax (CGT) roll-over rules, identifying and evaluating opportunities for rationalisation of existing rules and provisions for easier use and interpretation.

The second consultation paper sets out the Board's first-stage proposal for rationalising (and replacing) seven of the key roll-overs dealing with restructuring transactions. The paper aims to:

- present a framework of principles for CGT roll-overs to help develop a shared understanding of what roll-overs are for and the role they play in the CGT framework and the tax system more broadly; and
- present a general roll-over for business restructuring.

The proposals will potentially have taxation implications for superannuation funds, particularly the specific roll-over relief for merging superannuation funds and greater scope for a trustee to rationalise a fund's investment structure following a merger.

Submissions close on 5 February 2021.

Superannuation trustees and particularly the finance function of the trustee office, should review the proposed comprehensive, general restructure roll-over and its potential application to fund mergers and successor fund transfers.



Salary Sacrifice Contributions

18 January 2021
Technical Amendment

[LINK TO DETAILS](#)

The ATO released an addendum to *Superannuation Guarantee Determination SGC 2006/02* to reflect amendments made to **superannuation guarantee** legislation by the *Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Act 2019*. The addendum also updates numerous references to income tax legislation.

The addendum confirms that an individual's salary sacrifice contributions cannot be used to reduce an employer's minimum superannuation guarantee contributions.

The legislation applies to individuals deemed to be employees for superannuation guarantee purposes and individuals under a contract principally for labour. The addendum applies from 1 January 2020.

Superannuation trustees may wish to ensure their employer-servicing teams are aware of this legislation. The determination is consistent with the previous changes to the law which closed the 'loophole' that some employers relied on to avoid paying superannuation guarantee contributions where the employee had entered into a concessional contribution salary sacrifice arrangement.



Derivative Transaction Rules

27 January 2021
Update

[LINK TO DETAILS](#)

ASIC released updated guidance to support consultation paper *CP 334 Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): First consultation*.

ASIC also noted the release of the Final Report by the European Securities and Markets Authority (ESMA) entitled *Technical standards on reporting, data quality, data access and registration of Trade Repositories under EMIR REFIT* released in December 2020. ASIC specifically cited the ESMA position regarding the changes adopted to the following sections of particular interest:

- Unique Trade Identifier (part 4.2.2), and
- Use of Legal Entity Identifiers (part 4.2.4)

Given ASIC's in-principle intent to align as closely as practical with the rules of other jurisdictions, ASIC has noted it will consider also adopting such changes in the next version of proposed ASIC rules for consultation.

ASIC requests stakeholders take the ESMA report into account in their feedback to CP 334.

Superannuation trustees should consider having their investment reporting specialists review the amended consultation paper in preparing a response to ASIC by the closing date of 1 March 2021.



AFCA Rules

21 January 2021
Instrument

[LINK TO DETAILS](#)

AFCA has amended its Rules to provide clarity for consumers and financial firms regarding its **jurisdiction to receive complaints** about the conduct of an **authorised representative** of an AFCA member.

The Rules change is a result of a legislative instrument issued by ASIC on 5 January 2021 requiring AFCA to update its Rules, arising in response to a NSW Supreme Court case regarding AFCA's jurisdiction to consider a complaint against a licensee in relation to the conduct of its corporate authorised representative, specifically where the conduct of the representative was without or outside authority.

The Rules now clearly reflect the same statutory liability for licensees regarding their authorised representatives as set out in the *Corporations Act* and the *National Consumer Credit Protection Act*.

The updated AFCA Rules apply to complaints received by AFCA from 13 January 2021 onwards. Any complaints received prior to this date will be handled by AFCA under the previous Rules.

Superannuation trustees should identify any current complaints with AFCA which may be impacted by this change to AFCA's jurisdiction.



ATO Coronavirus Early Release

18 January 2021
Notification

[LINK TO DETAILS](#)

The ATO announced it will stop supporting the current **Bulk Data Exchange (BDE)** process at the end of January 2021.

After this time, **funds can stop checking the BDE for approval files** for processing. Instead, the ATO will contact a fund directly where a determination is made regarding the coronavirus early release.

The ATO cited low volumes as the reason for the change. The last approval files were issued via the BDE on 29 January 2021.

Superannuation trustees and administrators should ensure their internal procedures regarding the coronavirus early release have been updated to reflect this change.



GUIDANCE AND POLICY



APRA Priorities

1 February 2021
Update

[LINK TO DETAILS](#)

APRA released its **policy and supervision priorities** for the next 12-18 months. The superannuation specific policy priorities include:

- supporting the implementation of the ***Your Future, Your Super*** reforms, including conducting the proposed annual performance test, updating its **Prudential Standard SPS 515** and associated practice guides;
- enhancing the superannuation prudential framework, including consultation on Prudential Standards ***SPS 530 Investment Governance***; ***SPS 231 Outsourcing*** and ***SPS 220 Risk Management***; and
- implementing the Hayne Royal Commission recommendations.

The superannuation specific supervision priorities include:

- improving member outcomes through a number of **thematic supervisory activities** to include a **review into unlisted asset valuation practices**;
- a review of trustee implementation of requirements under **SPS 515**;
- continued heightened supervision of **underperforming MySuper products**;
- in-depth review of selected large trustees' **management of outsourcing providers**; and governance, risk culture, remuneration and accountability initiatives;
- enhancing super data and insights with the release of a response package following the consultation on phase one of the **Super Data Transformation project**; and
- improving industry transparency with the release of a **Choice Heatmap** in the second half of 2021.

Superannuation trustees should review APRA's priorities and consider aligning internal priorities where necessary.



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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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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