JUNE 2021

QMV LEGAL

LEGAL, REGULATORY, & POLICY UPDATE

PENSIONS AND SUPERANNUATION

INSIDE THIS EDITION

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Jonathan Steffanoni
Partner

IN BRIEF

Even for superannuation trustees, June was an exceptionally demanding month of legislative, regulatory, and policy change. The ***Your Future, Your Super*** *legislation found its way through the Parliament with only minor amendments and has largely commenced, exception being the stapling reforms now deferred until November.*

The ***More Flexible Superannuation Bill*** *found its way back onto the agenda and was the bargaining platform for cross bench amendments related to recontribution of early release payments outside the non-concessional contribution caps (in addition to its original intent of extending the* ***bring forward rule*** *to members up to age 67).*

I'll not even attempt to summarise the rest of the changes; but being the end of the financial year there were important technical updates and some regulator guidance.

MAJOR UPDATES

Commonwealth Parliament

June 2021
Parliamentary Business

LINK TO DETAILS

Commonwealth Parliament sat between 15-24 June and the House of Representatives held an additional sitting between 1-3 June. The following superannuation related legislation was passed:

- *Treasury Laws Amendment (Your Future, Your Super) Bill 2021*
- *Treasury Laws Amendment (More Flexible Superannuation) Bill 2020*
- *Treasury Laws Amendment (Self Managed Superannuation Funds) Bill 2020*
- *Financial Regulator Assessment Authority Bill 2021*
- *Financial Regulator Assessment Authority (Consequential Amendments and Transitional Provisions) Bill 2021*

Two new superannuation related bills were also introduced:

- *Financial Sector Reform (Hayne Royal Commission Response - Better Advice) Bill 2021*
- *Treasury Laws Amendment (2021 Measures No. 5) Bill 2021*

The following superannuation related bills remain before Parliament:

- *Treasury Laws Amendment (2021 Measures No. 1) Bill 2021*
- *Treasury Laws Amendment (2020 Measures No. 4) Bill 2020*
- *Security Legislation Amendment (Critical Infrastructure) Bill 2020*

Superannuation trustees should remain apprised of bill status to ensure preparedness for any required change implementation, including ensuring adequate planning and resources are in place.

SG Increase

18 June 2021
Legislation

LINK TO DETAILS

The ATO has issued a reminder to employers and trustees that the Superannuation Guarantee (SG) rate increases from 9.5% to 10% effective 1 July 2021.

The rate used to determine the superannuation guarantee shortfall amount, and therefore payable as a superannuation guarantee charge will increase incrementally by 0.5% from 1 July 2021 until it reaches 12% in July 2025.

Although primarily affecting employer obligations, superannuation trustees should ensure that any notional contribution calculation amounts for defined benefit funds accommodate the change in rate, and that any retirement planning tools and calculators accurately reflect the increase. Consideration should also be given to updating any member information on websites or other material.

Your Future, Your Super

22 June 2021
Royal Assent

LINK TO DETAILS

The *Treasury Laws Amendment (Your Future, Your Super) Bill 2021* was passed by both Houses and received Royal Assent, giving effect to several significant reforms, some commencing from 1 July 2021.

The Bill passed largely in its original form, however there were several amendments made in both the House of Representatives and the Senate, including:

- Removal of the ministerial power to prohibit the trustee from making a payment or investment of a kind prescribed by Regulations;
- Deferral of the Stapling provision to employment commencing on or after 1 November 2021 (from 1 July 2021); and
- Removal of the provision for the Regulations to specify additional requirements in order to comply with best financial interests duty.

Notably, several proposed amendments failed to gain enough support within the Senate, including the removal of the best financial interests schedule in its entirety, an exclusion for dangerous occupation employees from the Stapling provisions, and the inclusion of choice products in the underperformance test.

A significant amount of detail to support the legislation is deferred to Regulations, however these are yet to be finalised. A consultation on exposure draft regulations closed on 25 May 2021.

As outlined in the legislation, the ATO has launched the Your Super comparison tool for MySuper products. Members are able to access the personalised version through MyGov where they can be shown their current super accounts alongside other MySuper products.

Superannuation trustees should immediately consider the impact of the reforms, especially as they relate to decision record keeping of a superannuation trustee in relation to the best financial interests duty given the 1 July 2021 commencement.

The forthcoming Regulations will also require further scrutiny when released.

Bring Forward Rule

22 June 2021
Royal Assent

LINK TO DETAILS

The *Treasury Laws Amendment (More Flexible Superannuation) Bill 2020* received Royal Assent, after Senate amendments were made.

Originally introduced into Parliament in May 2020, the legislation extends the maximum age for an individual to 'bring-forward' non-concessional contributions to age 67 (up from the current age of 65). The changes apply to any non-concessional contribution made from 1 July 2020.

The changes take effect from 1 July 2021 and complete the More Flexible Superannuation reforms which had otherwise been implemented through regulation on 1 July 2020.

Superannuation trustees should ensure their administration and member-facing teams are aware of the changes and monitor for any further guidance on the reforms, particularly those related to the recontribution provisions given the recency of these announcements.

Early Release Recontribution

22 June 2021
Legislation

LINK TO DETAILS

The *Treasury Laws Amendment (More Flexible Superannuation) Bill 2020* was passed with amendments by the Senate, including a measure which will allow members who utilised the Coronavirus early release initiative to make 're-contributions' which do not count toward non-concessional contributions cap.

Re-contributed COVID-19 payments will need to be separately identifiable to ensure the member is prevented from claiming a tax deduction on them and to ensure MATS reporting doesn't result in the amount being counted towards the member's non-concessional contribution cap.

These changes commence from 1 July 2021.

Superannuation trustees should engage their administration function or service provider to ensure that arrangements are in place to identify any such contributions and to configure systems and processes to integrate changes to ATO reporting.

Excess concessional contributions

22 June 2021
Legislation

LINK TO DETAILS

The *Treasury Laws Amendment (More Flexible Superannuation) Bill 2020* was also amended in the Senate to repeal the excess concessional contributions charge imposed on excess concessional contributions included in an individual's assessable income. The Act also amended the *Tax Administration Act 1953* to require that the Commissioner must make a written determination stating the amount of such excess concessional contributions.

The change applies in relation to excess concessional contributions for a financial year starting on or after 1 July 2021.

The ATO administers all aspects of general interest charges (GIC), including those on excess concessional contributions.

Superannuation trustees should consider making updates to any member information on the fund website or other disclosure material or member service guides to ensure that these changes are represented accurately to members.

Financial Regulator Assessment Authority

29 June 2021
Royal Assent

LINK TO DETAILS

The *Financial Regulator Assessment Authority Bill 2021* received Royal Assent alongside the *Financial Regulator Assessment Authority (Consequential Amendments and Transitional Provisions) Bill 2021*. The legislation gives effect to recommendations 6.13 and 6.14 of the Hayne Royal Commission, by establishing the Financial Regulatory Assessment Authority (FRAA) to assess and report on the effectiveness and capability of APRA and ASIC.

The Authority must undertake this assessment once in every 2 financial years starting on 1 July 2021. A report must be generated by the FRAA and tabled in each House of the Parliament within 20 sitting days of that House after the report is received by the Minister.

The Government have announced that within its first year the FRAA will be tasked with assessing the effectiveness and capability of ASIC to assist in ensuring ASIC is operating consistently with the Government's Statement of Expectations.

Superannuation trustees should note the passing of this legislation and the requirement to cooperate with the FRAA and provide information as requested.

Better Financial Advice Bill

24 June 2021
Bill introduced

LINK TO DETAILS

The *Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Bill 2021* was introduced into Parliament seeking to make changes to the regulation and oversight of the financial advice sector. The legislation seeks to implement and expand upon Recommendation 2.10 of the Hayne Royal Commission which proposed that a single and centralised disciplinary body be established and all financial advisors who provide personal financial advice to retail clients be registered. Accordingly, the Bill seeks to:

- expand the role of the Financial Services and Credit Panel within ASIC to operate as the single disciplinary body for financial advisers;
- create additional penalties and sanctions for financial advisers who have breached their obligations under the *Corporations Act*, reflecting that the current set of sanctions are limited to banning a financial adviser;
- introduce a new registration system for financial; and
- transfer functions from the Financial Adviser Standards and Ethics Authority (FASEA) to the Minister.

The Bill also proposes the following changes:

- the wind up of FASEA and its standard making functions moved to be the responsibility of the Treasurer, supported by Treasury;
- tax (financial) advisers will no longer be regulated by the Tax Practitioners Board but instead will be regulated only under the *Corporations Act*; and
- ASIC will be responsible for administering the adviser exam.

The Bill will also give the Minister the power to extend the cut-off date for certain existing financial advisers to pass the exam, likely to result in deferral of the cut-off date to 30 September 2022 for advisers who have attempted the exam twice prior to 1 January 2022. The Bill has been referred to the Senate Economics Legislation Committee with a report due by 28 July 2021.

Superannuation trustees should review the Bill engage with their financial advice partners to ensure that the impact of the changes is assessed.

SMSF Members

22 June 2021
Legislation

LINK TO DETAILS

The *Treasury Laws Amendment (Self Managed Superannuation Funds) Bill 2020* was passed by both the Senate and the House of Representatives without amendment and received Royal Assent on 22 June 2021.

The legislation increases the maximum number of members within both a Self-Managed Superannuation Fund (SMSF) and Small APRA Fund to 6 members.

The changes commence 1 July 2021.

The *Treasury Laws Amendment (Self Managed Superannuation Funds) Regulations 2021* were made on 24 June 2021 to apply consequential amendments in support of the change.

Whilst no impact is expected for APRA regulated fund trustees, superannuation trustees should note the change and consider whether any updates are required to member communication.

Unclaimed Money

24 June 2021
Bill introduced

LINK TO DETAILS

The *Treasury Laws Amendment (2021 Measures No. 5) Bill 2021* was introduced to Parliament containing several amendments to the *Superannuation (Unclaimed Money and Lost Members) Act 1999* ('the Act').

The amendments allow the ATO to recover, in certain circumstances, amounts overpaid to superannuation providers that have been paid by the ATO to reunify an individual with their unclaimed superannuation.

The change applies to the recovery of overpayments on or after the commencement of these amendments, irrespective of when the overpayment occurred. However, the Commissioner cannot recover the excess from the superannuation provider for a fund if the fund does not hold an amount attributable to the overpayment.

A separate tranche of amendments to the Act requires the Commissioner to ensure that any New Zealand-sourced amounts held under the Act are treated consistently with existing legislation. Specifically, the amendments prevent the Commissioner from paying unclaimed money with a New Zealand-sourced amount to:

- a superannuation fund if that fund is a SMSF or has otherwise not notified the ATO that it accepts New Zealand sourced amounts; or
- an individual unless they have met the eligibility age for both the Australian and New Zealand components.

The amendments will also require the ATO to administer the receipt of any unclaimed money to identify where a New Zealand-sourced component may be included, so as to administer this component separately.

Superannuation trustees should note the changes and ensure they comply with a recovery notice where an overpayment by the ATO may have occurred. Where a superannuation trustee has nominated to accept New Zealand-sourced contributions, they should continue to administer this component separately, including in money received from the ATO.

TECHNICAL CHANGES AND UPDATES

Modernising Business Communications

25 June 2021
Exposure draft

LINK TO DETAILS

Treasury released *Treasury Laws Amendment (Measures for a Later Sitting) Bill 2021: Use of Technology for Meetings and Related Amendments* for consultation.

The draft legislation seeks to make permanent the temporary relief provided by the Government in response to the Coronavirus pandemic which allowed for the electronic execution of company documents and the use of technology to hold meetings virtually.

The draft proposes that when a company executes a document, it may be signed electronically; the witnessing of the fixing of the seal may be performed electronically; separate copies of the document may be used by each person (split execution is permitted); and the document may be executed by the sole director of a proprietary company that does not have a company secretary.

Additional changes include:

- all companies and registered schemes can hold physical and hybrid meetings, and wholly virtual meetings may also be used if they are expressly required or permitted by the constitution
- all meetings, regardless of how they are held, must give members a reasonable opportunity to participate
- Documents relating to meetings may be signed and given using electronic means, regardless of whether the meeting is a virtual, physical or hybrid meeting.
- allowing a member or group of members with more than 5 per cent of the voting power to require a listed company or registered scheme to appoint an independent person to observe or report on a poll.

Feedback to the consultation is requested by 16 July 2021.

Superannuation trustees should review the draft legislation and remain apprised of any developments given the impact these changes are likely to have on fund operations.

Tax Withholding Schedules

10 June 2021
Legislative Instrument

LINK TO DETAILS

The Government has released the *Taxation Administration Act Withholding Schedules 2021*.

The instrument contains fifteen withholding schedules, each specifying the amount, formulas and procedures to be used for working out the amount required to be withheld by an entity under the pay as you go (PAYG) system.

The only update as related to superannuation is *Schedule 13 - tax table for superannuation income streams*, which has been amended as a result of the indexation of the Defined Benefit Income Streams.

The updated schedules take effect for all payments made from 1 July 2021.

Superannuation trustees who provide a defined benefit income stream should familiarise themselves with the updated Schedule 13 and ensure all systems are updated to reflect the new rates.

AML/CTF Rules

15 June 2021
Legislative Instrument

LINK TO DETAILS

AUSTRAC released *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* to amend the AML/CTF Rules effective 15 June 2021.

The amendments support reforms to the AML/CTF Act as made by the *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020* which was passed in December 2020. Following a consultation on draft rules earlier this year, the amended Rules (as relating to superannuation) include:

- Expanded exceptions to tipping-off provisions as related to Suspicious Matter Reporting (SMR) to include other parties such as auditors, legal practitioners, law enforcement agencies (including ASIC and APRA), and offshore members of the same corporate or designated business group that are regulated by laws that give effect to some or all the international Financial Action Task Force (FATF) recommendations;
- Expanded circumstances where an entity can rely on customer identification by another reporting entity where a Customer Due Diligence (CDD) Arrangement is in place with the appropriate monitoring and reporting mechanisms; and
- Enhanced customer due diligence requirements, whereby customers must be identified before providing a designated service, except for very limited circumstances.

AUSTRAC has also released additional information on their webpage to support the reforms.

Superannuation trustees should consider whether the amended rules require changes to be made to the trustee's AMLC/CTF Program, particularly as they relate to outsourced arrangements where ID verification may be performed and tipping off.

Supervisory Levies

24 June 2021
Determination

LINK TO DETAILS

Treasury made the *Australian Prudential Regulation Authority Supervisory Levies Determination 2021* to set out the levies payable to the Commonwealth by financial institutions. This follows a consultation period in relation to the levies in May 2021.

For superannuation funds (excluding small APRA funds), the restricted levy component is 0.00390%, subject to a minimum levy amount of $750 and maximum of $800,000. The unrestricted levy component is 0.002925%.

The proportion of levy money paid to APRA on behalf of the Commonwealth for the 2021-22 financial year is 84.3%.

Superannuation trustees should note the determination and ensure fund accounting teams are made aware of the figures.

Personal Transfer Balance Cap

24 June 2021
Announcement

LINK TO DETAILS

The ATO has announced that individuals' personalised transfer balance cap will be available on ATO Online from 5 July 2021. Members will be able to view their personal transfer balance cap in ATO Online and their agents will be able to view this information in Online Services for Agents.

This coincides with the indexation of the general transfer balance cap on 1 July 2021, whereby individuals will hold a personalised transfer balance of between $1.6m and $1.7m, depending upon their personal circumstances. This is the first year since the transfer balance was introduced that the general transfer balance cap has been indexed.

Consequently, the ATO has notified superannuation funds that transfer balance cap reporting will not be processed by the ATO between 1 to 5 July 2021.

Superannuation trustees should note the announcement and ensure member-facing teams are aware of the change and can incorporate this tool into reference material and member communications as relevant.

Trustees should also note the outage of transfer balance cap processing by the ATO in case of queries or escalations that may arise over this time.

AFSL Update

18 June 2021
Legislative Instrument

LINK TO DETAILS

ASIC has extended existing licensing relief in place for public offer trustees to include all registrable superannuation entities to ensure that non-public offer trustees are regulated consistently with public offer trustees under the Corporations Act.

The *ASIC Corporations (Superannuation and Schemes: Underlying Investments) Instrument 2016/378* currently provides an exemption to trustees of public offer entities from the requirement to hold an Australian financial services licence (AFSL) covering the provision of the financial service of dealing in a financial product (other than an interest in the fund) in the ordinary course of operating the superannuation fund.

ASIC has made *ASIC Corporations (Amendment) Instrument 2021/550* which extends the AFSL relief to non-public offer trustees.

The change is consistent with ASIC's previously communicated position that the relief would be extended to non-public offer trustees following the implementation of the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* and associated regulations. The Regulations repeal the current exemption in place for non-public offer trustees to hold an AFSL to deal in a financial product from 1 July 2021.

This relief applies until 31 December 2022. Prior to its expiry, ASIC will consult on the operation of the instrument with industry and reconsider the appropriateness of the relief following the introduction of the new financial service – 'provide a superannuation trustee service'.

No action is required by superannuation trustees in relation to this licensing change, however a broader review of AFSL requirements should be performed to ensure they remain compliant given the new Superannuation Trustee Service regime.

Family Law

15 June 2021
Legislative Instrument

LINK TO DETAILS

The Australian Government Actuary has made *Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2021*.

The Determination sets out the annual adjustment that is to be applied to the base amount of a future superannuation Family Law split as it relates to a Defined Benefit interest. The declared interest rate is 5.7% which is unchanged from the 2020/2021 financial year.

The annual adjustment must be applied to the designated base amount of the split as per the court order or agreement and determines the non-member spouse entitlement to a benefit.

The Determination commences from 1 July 2021.

Superannuation trustees who administer family law flagging orders should ensure the correct interest rate continues to apply to superannuation benefits that are flagged for a future family law split.

Pension Drawdown

24 June 2021
Legislative Instrument

LINK TO DETAILS

The Government registered the *Superannuation Legislation Amendment (Superannuation Drawdown) Regulations 2021* to extend the temporary reduction in superannuation minimum drawdown rates.

The rates were reduced by 50% for the 2019-20 and 2020-21 financial years in response to the Coronavirus pandemic but have been extended until 30 June 2022.

This reduction in rates was foreshadowed by an announcement from the Treasurer in May.

Superannuation trustees should ensure the appropriate teams are made aware of the extension, including outsourced providers, and that all fund collateral is updated to reflect this announcement. Drawdown and payment processes should be updated to ensure the minimum drawdown amounts are retained in the 2021-22 financial year.

NSW Property Tax

June 2021
Progress Paper

LINK TO DETAILS

The NSW Government released a Progress Paper in relation to the proposed property tax reforms, whereby people are to be given the option to replace stamp duty with an ongoing property tax.

The Paper provides an update on the consultation process as well as more information on the proposed model, reflecting further policy and design development.

Further detail contained within the report includes:

- Revised tax rate structure as applying to different property classes (including an increase to commercial property);
- Proposed indexation formula on tax payable in future years;
- Treatment of specific types of property as mapped against the four different property classes;
- Detail on how existing land tax exemptions and concessions will be treated under the proposed reforms;
- Updates to tenant protection policies.

The Government is continuing to accept feedback on this proposal until 31 July 2021.

Superannuation trustees should remain apprised of the reforms and monitor any impact on any new property investments in New South Wales.

SMSF Verification Service

22 June 2021
Announcement

LINK TO DETAILS

The ATO has reminded superannuation fund trustees that the SMSF verification service (SVS) is due to replace the member verification service (MVS) from September 2021.

Superannuation funds must use the MVS before rolling over a benefit to a SMSF to validate the SMSF and confirm the requesting member is a registered member of the SMSF. SVS will replace this service and verify:

- SMSF status (Complying or Regulated),
- the TFN of the member requesting the matches the SMSF,
- no verified date of death exists for that member,
- SMSF bank details are held by the ATO, and
- Electronic Service Address (ESA) is held by the ATO.

The current MVS service will remain available until close of business 24 September 2021 and can be accessed via the Online Services for Business function, due to replace the existing Business Portal at the end of July.

Superannuation trustees and their administrators should note the change and ensure all necessary authorisations and procedures are in place prior to the mandatory use of the SVS.

LIBOR

4 June 2021
Announcement

LINK TO DETAILS

Regulators in Australia are reiterating the importance of ensuring a timely transition away from the London Interbank Offered Rate (LIBOR). This requires ceasing the use of LIBOR in new contracts before the end of 2021.

On 2 June 2021, the Financial Stability Board (FSB) announced that all new use of LIBOR benchmarks should cease as soon as practicable and no later than the timelines set out by home authorities and/or national working groups in the relevant currencies.

ASIC, APRA and the RBA support the guidance and expectations set by the FSB and the US Banking Supervisors and expect all market participants to adhere to the deadline at the end of 2021 concerning new LIBOR contracts, and accelerate the active conversion of legacy LIBOR contracts.

Superannuation trustees with a LIBOR exposure should note the guidance and the previously released ASIC information sheet (INFO 252) which sets out practical guidance which entities can adopt during this transition.

Concessional Contributions

24 June 2021
Bill introduced

LINK TO DETAILS

The *Treasury Laws Amendment (2021 Measures No. 5) Bill 2021* would amend s291-25 of the *Income Tax Assessment Act 1997* to clarify that a fee refund paid by a trustee to a member's superannuation account is not a concessional contribution. This means the amount refunded does not count towards the member's concessional contribution cap.

A fee must be refunded to the member under s99G of *the Superannuation Industry (Supervision) Act 1993* if the account is a low balance account, and the total capped fees and costs deducted for the year are above the prescribed maximum level.

Superannuation trustees should note the change and ensure low balance fee refunds are excluded from concessional contribution cap reporting.

GUIDANCE AND POLICY

Ongoing Fee Disclosure

11 June 2021
Announcement

LINK TO DETAILS

The Government has announced its intention to make a Regulation to provide temporary relief regarding the disclosure of fees paid under an ongoing fee arrangement.

The *Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021* introduced an obligation on ongoing fee recipients to disclose the fees paid within the prior 12 months in a fee disclosure statement and provide an estimate of the fees payable in the subsequent 12 months. The statement of actual fees paid must include all fees up to the day prior to the statement being issued.

The forthcoming Regulation will allow financial advisers to disclose an estimate of the fees charged for the period of 60 days prior to the report end date on the statement. This estimate must accompany the actual fees charged for the remaining 10 months of the statement period.

The Regulation will only apply for the duration of the transition period of 1 July 2021 to 30 June 2022, at which time financial advisors have 60 days from the fee disclosure statement anniversary date to report all fees paid for the prior 12-month period.

This announcement is supported by an *Information Sheet INFO 256 FAQs: Ongoing fee arrangements* released by ASIC on 15 June, which is intended to provide greater clarity to financial advisers and advice licensees on their obligations when providing personal advice to retail clients, and answers frequently asked questions about the obligations that apply to fee recipients in relation to ongoing fee arrangements, fee disclosure statements, and ongoing fee consents.

Superannuation trustees should review the updated guidance released by ASIC where an ongoing fee arrangement may apply and keep apprised of any updates released from the Government as they may pertain to the transitional relief announced.

AML/CTF Inquiry

23 June 2021
Senate inquiry

LINK TO DETAILS

A Senate inquiry has been established into the adequacy and efficacy of Australia's AML/CTF regime. The Senate Legal and Constitutional Affairs References Committee will conduct the inquiry and is expected to report by 2 December 2021.

The Terms of Reference are broad and include:

- The extent to which AUSTRAC relies upon and responds to reporting by designated services and identifies emerging problems with this reporting;
- The extent to which the AML/CTF regime could be strengthened to identify and address governance and risk management weaknesses;
- The effectiveness of the AML/CTF Act to prevent money laundering outside the banking sector
- Australia's compliance with the Financial Action Task Force (FATF) recommendations and the Government's response

The deadline for submissions to the inquiry is 27 August 2021.

Superannuation trustees should note the inquiry and consider whether to make a submission.

APRA Reporting

18 June 2021
Guidance

LINK TO DETAILS

APRA has published additional frequently asked questions (FAQs) and worked examples for superannuation licensees to provide further guidance on meeting the Reporting Standards for Phase 1 of the Superannuation Data Transformation.

The latest release of worked examples relate to SRS 550.0 Asset Allocation, SRS 705.0 Components of Net Return, SRS 705.1 Investment Performance and Objectives and SRS 706.0 Fees and Costs. A new release of FAQs has also been published.

APRA is continuing to publish worked examples and FAQs in the lead up to the first collection of data under the new Reporting Standards on 30 September 2021.

Superannuation trustees should ensure that teams tasked with APRA reporting are aware of the guidance and prepared for the new Reporting Standards to come into effect.

Regulator Performance Guide

18 June 2021
Guidance

LINK TO DETAILS

The Government released the Regulator Performance Guide which sets out the Government's expectations for regulator performance from 1 July 2021.

The guide outlines best practice principles for regulators:

- **Continuous improvement and building trust:** regulators adopt a whole-of-system perspective, continuously improving their performance, capability and culture to build trust and confidence in Australia's regulatory settings.
- **Risk based and data driven:** regulators manage risks proportionately and maintain essential safeguards while minimising regulatory burden, and leveraging data and digital technology to support those they regulate to comply and grow.
- **Collaboration and engagement:** regulators are transparent and responsive communicators, implementing regulations in a modern and collaborative way.

The Guide also provides detail on changes to reporting requirements from 1 July 2021, whereby Regulators will no longer be required to produce a standalone performance report but will report publicly via a Corporate Plan and Annual Report.

Although no action is required from superannuation trustees, changes may be noted across communication and engagement practices by Regulators as this guidance is implemented.

APRA and ASIC Advice Fee Guidance

30 June 2021
Guidance

LINK TO DETAILS

APRA and ASIC have issued a joint letter to all RSE licensees providing further guidance on their expectations and oversight of financial advice fees charged to member accounts.

The letter advises trustees to consider their arrangements in light of both the findings set out in the letter and the recent law reforms regarding the deduction of financial advice fees under specific arrangements. These reforms commenced on 1 July 2021 via the Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021.

The letter sets out specific issues , findings and guidance relevant to each question set out in the Regulators' letter of 10 April 2019, including:

- Over-reliance on member consent should be avoided. Instead, reliance on the consent should be combined with further trustee oversight practices, in particular, proactive reviews of a sample of Statements of Advice (SOAs) and/or related documents to evidence the provision of services, either where misconduct is suspected or as part of a regular review.
- Deductions should be shown on annual statements with enough information to assist the member with understanding the payment (such as name of financial adviser or business name or licensee name).
- An area of weakness for trustees is the lack of formal processes for checking financial adviser identification and qualifications. Trustees should undertake due diligence assessments.
- Trustees should consider whether the advice or a portion thereof meets the sole purpose test.
- Record keeping obligations include records of FDs, member notifications to renew or terminate an ongoing fee arrangement and member consents regarding advice fee deductions.

The letter also advises that Trustees can expect further follow up from APRA and ASIC in relation to their oversight practices.

Superannuation trustees should ensure they are familiar with the guidance and that internal governance frameworks and operating model reflect the requirements within both the letter and legislation.

Insurance in Super

1 July 2021
Guidance

LINK TO DETAILS

Guidance has been released in relation to improving outcomes for vulnerable members and claims handling for members with life insurance in group superannuation.

The Association of Superannuation Funds of Australia (ASFA), the Australian Institute of Superannuation Trustees (AIST) and the Financial Services Council (FSC) jointly released the guidance which is intended to replace the Insurance in Super Voluntary Code of Practice (the Code), as much of the Code has been superseded by regulatory change.

Two specific guidance documents have been created: *Developing a vulnerable member policy* and *Claims handling standards for Superannuation Funds*. These documents maintain or enhance key components of the Code and ensure consumer protections are maintained in areas not governed by legislation.

Superannuation trustees should review the guidance and consider whether any uplift is required in relation to trustee operations and member disclosure.

DDO and Member Outcomes

1 July 2021
Guidance

LINK TO DETAILS

APRA and ASIC held the inaugural Superannuation CEO Roundtable with a focus on implementation of SPS 515 Strategic Planning and Member Outcomes (SPS 515) and Product Design and Distribution Obligations (DDOs).

Key points from the roundtable notes include:

- APRA will be sharing its findings on SPS515 in the coming months but noted that issues with the implementation observed so far include a lack of specificity, justification and rigour in methodologies, strategic projections and objectives.
- ASIC has been engaging with industry, primarily through industry associations, and has observed a wide variation in DDO readiness. Better practices include focusing beyond target market determinations to overall product governance.
- There will be an evolution in sophistication of approach over time in both regimes.
- ASIC encourages trustees to take a holistic approach to the DDOs, noting that there can be benefits in applying this thinking across all of their products.

Superannuation trustees should review the Roundtable Note and consider comments from the Regulators, particularly with respect to implementation of DDO.

ATO Strategic Map

30 June 2021
Timeline

LINK TO DETAILS

The ATO released an updated Superannuation and Employer Obligations Strategic Map as at 30 June 2021.

The map provides a useful timeline of upcoming key changes affecting superannuation trustees, including:

- The Eligible rollover fund transition;
- Changes in eligibility ages (downsizer contribution; bring forward arrangements)
- Ability to recontribute COVID-19 early release super amounts;
- RG 97 changes; and
- Data collection.

Superannuation trustees should refer to the map for an overview of upcoming changing across the ATO, APRA and ASIC.

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David Reckenberg
LLB (Hons), B.Ec
Managing Partner
0411 265 284
dreckenberg@qmvsolutions.com

Jonathan Steffanoni
JD, BA, Dip.FS, FASFA
Partner
0434 835 966
jsteffanoni@qmvsolutions.com

Gabriela Pirana
JD, BSc.
Senior Associate
0450 814 596
gpirana@qmvsolutions.com

Jessica Pomeroy
MBA, BA
Senior Consultant
0400 708 447
jpomeroy@qmvsolutions.com

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