

LEGAL, REGULATORY & POLICY UPDATE

PENSIONS AND SUPERANNUATION

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IN BRIEF

January was the **quietest month** for legislative and regulatory change for superannuation funds in a long time. A small traffic jam of superannuation related bills remains before Parliament, and with an election looming **progress of some of these bills** appears uncertain.

In an important development, Treasury released the first **Data Strategy and Action Plan** which supplements several ongoing initiatives, including the ever-expanding **Consumer Data Right**, for which Treasury announced **Open Finance** (including superannuation) as the next priority area.

APRA continues to release information and FAQs for the **Super Data Transformation Project** and released the 2021 Year in Review and forward-looking **Policy and Supervisory priorities** for the upcoming 12 months.

LEGISLATION



Commonwealth Parliament

January 2022
Parliamentary Business

[LINK TO DETAILS](#)

Commonwealth Parliament does not resume until 8 February 2022. The 2022-23 Budget will be delivered on 29 March 2022.

The following superannuation related bills remain before Parliament:

- [Financial Accountability Regime Bill 2021](#) (Inquiry hearings began 27 January)
- [Financial Sector Reform \(Hayne Royal Commission Response No. 3\) Bill 2021](#)
- [Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021](#) (Inquiry hearings began 17 January)
- [Financial Services Compensation Scheme of Last Resort Levy Bill 2021](#)
- [Financial Services Compensation Scheme of Last Resort Levy \(Collection\) Bill 2021](#)
- [Treasury Laws Amendment \(Enhancing Superannuation Outcomes for Australians and Helping Australian Businesses Invest\) Bill 2021](#)
- [Treasury Laws Amendment \(2021 Measures No. 7\) Bill 2021](#)
- [Treasury Laws Amendment \(2020 Measures No. 4\) Bill 2020](#)
- [Corporations Amendment \(Meetings and Documents\) Bill 2021](#)
- [Superannuation Guarantee \(Administration\) Amendment Bill 2021](#)

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.



TECHNICAL CHANGES & UPDATES



APRA Data Project

19 January 2022
FAQs

[LINK TO DETAILS](#)

APRA continues to publish new and updated FAQs related to its **Superannuation Data Transformation Project**. In January, APRA released:

- Updated Historical Data FAQ 1.0 extending the due date for reporting historical data for SRF 251.2 Insurance Payments, which includes information on premiums collected and paid, rebates, and the claims management process until 30 May 2022.
- New Historical Data FAQs: 1.3-1.5 relating to the insurance arrangements for which historical data is required, the due date to submit historical data under SRS 251.0 (extended from 28 February to 30 May 2022), and the products, investment menus and investment options that require historical data.
- General FAQ 1.21 and 1.22 relating to APRA's intention to release a discussion paper to consult with industry on the publication of data as well as confidential treatment of data reported to APRA in February 2022 and to begin consultation on Phase 2 of the SDT in quarter 1 of 2022.
- New FAQ: SRS 605.0 t relating to the standard fee and cost arrangements that must be reported in SRF 605.0 table 4.

Superannuation trustees should review the additional FAQs and continue to work with APRA as the data project progresses into the second and third phases.



Cyber Security

17 December 2021
Alert

[LINK TO DETAILS](#)

The ATO issued CRT Alert 014/2021 advising of a recent **cyber-attack involving Frontier Software** and a large employer where employee information has been exposed online. The ATO warned that the personal information accessed may also have involved superannuation information.

The ATO is working with Frontier Software and will apply protective controls on individual ATO records as required.

The CRT encourages funds to be extra vigilant on changes to member accounts, new rollover requests, benefit payments or broader activity that may be out of pattern for members.

Superannuation trustees should note the CRT Alert and ensure that administrators are also aware of the potential compromise of personal information and other data.



Tax Commissioner Discretion

15 December 2021
Consultation

The ATO issued two instruments relating to superannuation benefits:

[Draft Tax Determination TD 2021/D6](#): clarifies the income tax treatment of a superannuation benefit where the Commissioner exercises the discretion in subsection 304-10(4) where a super benefit is not included in the member's assessable income because the ATO is satisfied that it would be unreasonable.

[Practice Statement Law Administration PS LA 2021/D3](#): sets out when and how to apply the discretion in section 304-10 of the *Income Tax Assessment Act 1997* (ITAA 1997) where a taxpayer receives a superannuation benefit from a complying superannuation fund in breach of legislative requirements.

Superannuation trustees should ensure that the financial advice representatives are aware of the changes to the exercise of the Commissioner's discretionary powers.



GUIDANCE AND POLICY



Data Strategy

16 December 2021
Policy

[LINK TO DETAILS](#)

The Department of the Prime Minister and Cabinet released Australia's first **Data Strategy**. The Strategy and Action Plan outline how data will be created, used, and shared across all levels of governments, while safeguards are maintained to keep the data secure.

The **Australian Data Strategy** signposts the Australian Government's data intent and efforts over the period to 2025. It focuses on three key themes:

- maximising the value of data – describes why data is important, its economic and social value, its use in responding to priority issues, and the benefit that can be gained through using and safely sharing data. Data can create new value when shared between different levels of government, and the private and non-government sectors.
- trust and protection – describes the settings that can be adopted in the private and public sectors to keep data safe and secure, and the frameworks available to protect Australians' data and ensure its ethical use through the entire data lifecycle.
- enabling data use – sets out approaches and requirements to leverage the value of data, such as capabilities, legislation, management and integration of data, and engaging internationally.

The Data Strategy and Action Plan do not introduce new regulations or legislation, but align with existing legislation, strategies, policies and reviews that regulate data, including the *Privacy Act 1988*, the **Digital Economy Strategy**, the **Cyber Security Strategy** and the **Consumer Data Right**.

Submissions close 30 June 2022.

Superannuation trustees should note the Data Strategy and Action Plan, and consider the possible strategic and operational impacts of the key initiatives.



Mid-Year Economic and Fiscal Outlook

08 December 2021
Policy

[LINK TO DETAILS](#)

Treasury released its **2021-22 Mid-Year Economic and Fiscal Outlook**, which reflects the Government's economic plan.

Superannuation related updates not previously announced include:

- The Government will provide \$2.4 million over three years from 2022-23 to the Australian Taxation Office (ATO) to develop a service that supports superannuation funds to transfer members' superannuation balances to the ATO for reunification with members' eligible active accounts identified via the service. The **account matching service** would operate for two years, commencing in 2022-23.
- The Government will provide \$45.3 million over four years from 2021-22 (and \$7.9 million per year ongoing) for the establishment and ongoing operation of the **Compensation Scheme of Last Resort (CSLR)**. This measure will be partially offset by an increase in levies collected by ASIC.

Superannuation trustees should note the Economic Plan and Fiscal Outlook.



Consumer Data Right

24 January 2022
Consultation

[LINK TO DETAILS](#)

Treasury released a report on outcomes from the **Consumer Data Right (CDR)** Strategic Assessment, identifying 'Open Finance' as the next priority area to expand the CDR. **Open Finance** will bring targeted datasets from across general insurance, superannuation, merchant acquiring and non-bank lending service providers into the CDR. By prioritising a smaller mix of targeted datasets across these sectors, the CDR will unlock a broader range of higher value use cases, compared to expanding one sector at a time.

Feedback suggested an initial focus on consumer-specific account information, such as account balances, for superannuation rather than product data, and product and/or attribute data for sub-categories of general insurance.

Treasury also stated that it would consider where complementary government-held datasets can be brought into the CDR ecosystem to support Open Finance.

Superannuation trustees should review the Strategic Assessment Report and consider any changes that may be required to facilitate Open Finance.



APRA Year in Review

28 January 2022
News

[LINK TO DETAILS](#)

APRA released its **2021 Year in Review**, which outlines APRA's view on the broader financial environment and how APRA delivered on the priorities and objectives set out in its Corporate Plan:

- RSE's continued to grapple with operational challenges due to the **pandemic and lockdowns**, but generally managed relatively well, with minimal disruption to member services.
- Member **account consolidation** continued, resulting in better member outcomes as well as cost pressures on RSE licensees, which are likely to continue into 2022 and beyond.
- The **Performance Test** and **MySuper Heatmap** coupled with "effective supervisory actions" has led to an increase in merge activity.
- Total administration and operating expenses as a percentage of net assets decreased from 0.37 percent to 0.34 per cent.

Superannuation trustees should review APRA's Year in Review and stay updated on APRA's initiatives.



APRA Priorities

1 February 2022
Announcement

[LINK TO DETAILS](#)

APRA released its **policy and supervision priorities** for the next 12 to 18 months. Consistent with APRA's 2021-2025 Corporate Plan, key priorities are forward-looking and centred around APRA's two strategic themes: "protected today" and "prepared for tomorrow". Key priorities include:

- improving **crisis preparedness**, including finalising two new prudential standards on **contingency and resolution planning (CPS 190 & CPS 900)**;
- strengthening core requirements for **strategic planning and member outcomes** in superannuation, to align with and reinforce the Government's Your Future, Your Super reforms;
- working with ASIC to implement the **Financial Accountability Regime**;
- rectifying sub-standard industry practices and eradicating unacceptable **product performance**; and
- **cyber risk** preparedness and responsiveness across all industries.

Superannuation trustees should note the announcement and consider the priorities within business and resource planning activities.



ENFORCEMENT



ASIC v Statewide

17 January 2022
*Civil Penalty
Proceedings*

[LINK TO DETAILS](#)

On 4 March 2021, ASIC commenced proceedings against *Statewide Superannuation Pty Ltd* alleging it made false and misleading representations about insurance cover held by members. Statewide admitted the allegations.

On 22 December 2021, the Federal Court imposed civil penalties of \$4 million and required Statewide to publish a written adverse publicity order and establish and implement a review and remediation program as a result of providing members with misleading information regarding their insurance and failing to report the issue to ASIC in the time required by law.

On 17 January 2022, the Federal Court published its [Reasons for Judgment](#), recognising among other things, that Statewide did not deliberately engage in the conduct.

Statewide had changed its administration system from SuperB to Acurity and the migration and processing of member insurance data to, and coding of insurance rules aligning to the terms of the insurance policies in, Acurity was not completed correctly.

Statewide accepted that it did not: adequately and properly test the migrated data; ensure that the terms of the insurance policies were accurately reflected on the administration system; and carry out structured testing of data and end of month processes.



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.

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CONTACT US

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