MARCH 2022

QMV LEGAL

LEGAL, REGULATORY & POLICY UPDATE

PENSIONS AND SUPERANNUATION

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IN BRIEF

*While the delivery of the **Commonwealth Budget** did not see significant changes introduced for superannuation trustees – a welcome reprieve, we did see an extension of the account-based **pension drawdown rates** for another year.*

*APRA and ASIC issued a letter of expectations related to the **Retirement Income Covenant** and APRA continued its focus on data with the commencement of **Phase 2 of the Superannuation Data Project**.*

*While several super-related bills remain before Parliament, we did see the **Superbad – Wage theft and non-compliance of the Superannuation Guarantee Report** and **Report on the implications of common ownership and capital concentration in Australia issued**.*

MAJOR UPDATES

Commonwealth Parliament

March 2022
Parliamentary Business

LINK TO DETAILS

The House of Representatives will sit between 11-14 April and both chambers may sit between 9-12 May and 16-19 May, unless election writs are issued and Parliament is prorogued before this date.

The following superannuation related bill received Royal Assent:

- *Security Legislation Amendment (Critical Infrastructure Protection) Bill 2022*

The following superannuation related bills remain before Parliament:

- *Treasury Laws Amendment (Streamlining and Improving Economic Outcomes for Australians) Bill 2022*
- *Treasury Laws Amendment (Enhancing Tax Integrity and Supporting Business Investment) Bill 2022*
- *Treasury Laws Amendment (Modernising Business Communications) Bill*
- *Financial Accountability Regime Bill 2021*
- *Financial Sector Reform (Hayne Royal Commission Response No. 3) Bill 2021*
- *Financial Services Compensation Scheme of Last Resort Levy Bill 2021*
- *Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2021*
- *Treasury Laws Amendment (2021 Measures No. 7) Bill 2021*
- *Treasury Laws Amendment (2020 Measures No. 4) Bill 2020*
- *Superannuation Guarantee (Administration) Amendment Bill 2021*

> *With election day having to occur no later than 21 May 2022, it is becoming less and less likely that the Bills that remain before Parliament will be passed. It is highly unlikely that the Bills still before Parliament will be passed before the election unless the Senate is extraordinarily recalled.*

Minimum Pension Drawdown

29 March 2022
Budget Measure & Regulations

LINK TO DETAILS

As announced in the Federal Budget, the *Superannuation Legislation Amendment (Superannuation Drawdown) Regulations 2022* (the Regulations) amend the SIS Regulations and the RSA Regulations to give effect to the Government's Budget 2022-23 measure to extend the temporary reduction in minimum payment amounts for account based pensions, allocated pensions and market linked pensions (and for the equivalent annuity products) by half for the 2022-23 financial year.

The measure was first legislated through the Coronavirus Economic Response Package Omnibus Bill 2020 to provide pensioners with account-based pensions with flexibility, enabling superannuation members to avoid mandatory sell down of investments during periods of ongoing volatility.

> *Superannuation trustees should engage with administration providers to ensure that systems are updated to reflect the extension and update any relevant member communications.*

Super Guarantee & Wage Theft

3 March 2022
Report

LINK TO DETAILS

The Senate Economics References Committee has issued *Superbad – Wage theft and non-compliance of the Superannuation Guarantee*, which makes 32 recommendations intended to address super guarantee (SG) non-compliance.

The recommendations include: amendments to the SGA Act to require SG to be paid at least monthly, and preferably in alignment with regular pay cycles (Rec. 5); amending the SGA Act to extend liabilities of unpaid SG to corporate entities, similar to the expanded accessorial liability provisions for franchisors and holding companies in relation to unpaid wages (Rec. 9); legislated option for private legal action against employers for unpaid SG (Rec. 14); and default super funds to have rigorous arrears collection processes in place (Rec.15).

> *Superannuation trustees should review the report and monitor its implementation, as the policy recommendations are likely to be considered or adopted in the next session of Parliament.*

APRA Data Project Phase 2

4 April 2022
Discussion Paper

LINK TO DETAILS

APRA launched the second phase of its superannuation data project seeking to enhance the breadth, depth and quality of data collected from superannuation funds. Phase 2 is focused on depth – lifting the granularity of the data APRA collects across super business operations.

APRA proposes to conduct industry consultation across three periods from September 2022 to June 2023 on the following topics:

- September to November 2022: RSE licensee operations and profile and financial data
- November to February 2022: Non-financial risk, insurance and investments
- March to June 2023: Membership, retirement outcomes, defined benefits, disclosure and any other topics raised through consultation

APRA has also laid out its five-year data collection roadmap for transforming its approach to collecting financial industry data across all APRA-regulated entities. The consultation paper sets out a roadmap for each industry.

> *Superannuation trustees should review the discussion paper and assess the impact on their current reporting capabilities.*

Contribution Flexibility (2021 Budget Measures)

3 March 2022
Legislative Instrument

LINK TO DETAILS

Treasury made *Treasury Laws Amendment (Enhancing Superannuation Outcomes) Regulations 2022* to support the passing of superannuation-related measures as announced in the 2021-22 budget and contained within *Treasury Laws Amendment (Enhancing Superannuation Outcomes For Australians and Helping Australian Businesses Invest) Act 2022* which received Royal Assent on 22 February 2022.

The changes take effect from 1 July 2022 and will:

- support the reduced eligibility age for downsizer contributions into superannuation from 65 to 60 years;
- repeal the work test for non-concessional and salary sacrificed contributions for individuals aged from 67 to 74 years (inclusive); and
- allow a defined benefit fund to grant an accrual of benefits in respect of a member aged between 65 and 75 years if the accrual is attributable to contributions made in respect of the member that are employer contributions or member contributions.

Work test conditions may still apply for individuals aged from 67 to 74 years (inclusive) who wish to deduct personal contributions. Accordingly, the work test conditions will now apply at the point of deducting the contributions rather than at the point of a fund accepting contributions.

Superannuation trustees should review the Regulations and ensure fund collateral, systems and processes are updated in readiness for these changes.

Cyber Security

1 April 2022
Royal Assent

LINK TO DETAILS

Following the Parliamentary Joint Committee on Intelligence and Security tabling of the *Advisory report on the Security Legislation Amendment (Critical Infrastructure Protection) Bill 2022*, the *Security Legislation Amendment (Critical Infrastructure Protection) Bill 2022* was passed by both houses, following amendments by the Senate.

The Bill, amongst other things, prescribes risk management programs for critical infrastructure assets; and enhanced cyber security obligations for assets most important to the nation, including reporting obligations.

Recommendation 1 of the advisory report relevantly recommends that the Department of Home Affairs and the Cyber and Infrastructure Security Centre establish a fresh round of consultation with critical infrastructure industry representatives, relevant employee representative bodies, and trade unions to enable further feedback to be incorporated into the draft Rules for risk management programs under the proposed amendments.

Recommendation 2 recommends further industry roundtables for review and improvement of the Rules and guidance materials, noting that the roundtables can also be used for continued review of the fit for purpose nature of sector and asset definitions.

In its submission to the Committee, the Department of Home Affairs, reiterated the commitment to avoid duplication and that obligations will not be 'switched on' if determined to be adequate, identifying that the banking, superannuation, insurance and financial market infrastructure assets, which are covered by APRA requirements are already compliant.

Superannuation trustees should monitor the implementation of Bill, as it may have some impact on those funds deemed to be critical superannuation assets.

TECHNICAL CHANGES AND UPDATES

IDR Reporting

30 March 2022
Requirements

LINK TO DETAILS

ASIC released the final mandatory requirement for the internal dispute resolution (IDR) data reporting framework. The requirements will be implemented in 2023 starting with a group of 11 large financial firms, which include Cbus, UniSuper, Rest and AustralianSuper, that will have to report IDR data to ASIC for the first time by 28 February 2023. The remainder of financial firms, including superannuation trustees, will be required to report by 31 August 2023.

ASIC will begin publishing IDR data once all financial firms have commenced reporting after 31 August 2023. The first report will cover all complaints received by financial firms during the period between 1 January and 30 June 2023. In the coming months ASIC will consult on its approach to publishing the IDR data.

> *Superannuation trustees should ensure that administrators and internal staff involved in the IDR process are aware of the reporting requirements and measures are implemented to allow superannuation trustees to comply with its reporting obligations.*

COVID Re-contribution Scheme

14 March 2022
Instructions

LINK TO DETAILS

The ATO released functionality to support the reporting of member COVID-19 re-contributions to the ATO.

The ATO has previously instructed superannuation funds to report the contribution on MATS as a non-concessional contribution, and store details of the re-contribution pending release of functionality to report the details to the ATO.

A *Re-contribution of COVID-19 early release of superannuation amount guide* has been released by the ATO to provide detailed instructions to superannuation trustees on how to lodge the file, which needs to be in csv format and contain the details as required within the guide. FAQs have also been released to provide general guidance on the re-contribution scheme.

An issue was identified with the csv file naming, however, the ATO confirmed in CRT 005/2022 that the issue has been resolved and the guide updated to include a new recommended file name and csv formatting tips.

> *Superannuation trustees should ensure their administrator is aware of the updated reporting requirements and has a solution in place to manage receipt and reporting of the re-contribution amounts.*

SuperMatch

25 March 2022
Statement

LINK TO DETAILS

The ATO advised they have observed suspicious activity with online account creation in connection with the SuperMatch service, similar to the behaviour that previously led the ATO to turn off the service in May 2020. This indicates to the ATO that the new member verification processes and data controls introduced in version 9 of the terms and conditions may not be working as intended.

The ATO will be contacting trustees utilising the service to further understand the existing controls around the use of the service, with a view to gaining a better understanding on the issues which will inform future guidance on the minimum monitoring and controls that must be in place to use the service.

> *Superannuation trustees should note the statement.*

ATO Instrument

24 March 2022
Legislative Instrument

LINK TO DETAILS

The ATO issued *Taxation Administration – Payment Summary Deferral: Employment Termination and Departing Australia Superannuation Payments Deferral 2022* which commences 1 April 2022. It replaces *Taxation Administration Act 1953 - Pay As You Go (PAYG) Withholding - Payment summary deferral - Employment termination and departing Australia superannuation payments* (F2012L00584), which is due to sunset.

The instrument defers the date that payment summaries in respect of employment termination payments and departing Australia superannuation payments must be given to the ATO to 14 August following the financial year in which the payment was made.

> *Superannuation trustees should note the change and ensure that administrators are also aware and have made any necessary changes to current processes.*

Retirement Estimates

28 March 2022
Legislative Instrument

LINK TO DETAILS

ASIC made ASIC Corporations (Repeal and Transitional—Relief for Providers of Retirement Estimates) Instrument 2022/204, repealing ASIC Class Order [CO 11/1227] Relief for providers of retirement estimates (Class Order) while providing transitional relief to extend its effect until 31 December 2022.

The Class Order provides conditional relief from the Australian financial services licensing, advice, conduct and disclosure requirements in the Corporations Act 2001 to superannuation fund trustees who prepare retirement estimates for their members in accordance with the conditions in the Class Order.

Before the relief expires on 31 December 2022, ASIC intends to remake and to make changes to the existing relief settings, as preserved by the Instrument, in a new legislative instrument that will provide conditional relief for superannuation fund trustees who prepare retirement estimates for their members and persons who provide superannuation calculators.

Superannuation trustees should note the transitional arrangement allowing it to rely on existing relief in the event it wishes to provide retirement estimates with annual statements to be issued for the 2021-22 financial year.

Corporate Collective Investment Vehicle

31 March 2022
Regulations

LINK TO DETAILS

The *Corporations and Other Legislation Amendment (Corporate Collective Investment Vehicle Framework) Regulations 2022* were made, which support the operation of the *Corporate Collective Investment Vehicle Framework and Other Measures Act 2022*. The Act inserts a new Chapter 8B into the *Corporations Act* to establish a Corporate Collective Investment Vehicle (CCIV) as a new type of company limited by shares.

Establishing the CCIV regime in Australia is intended to increase the competitiveness of Australia's managed funds industry by providing an internationally recognisable corporate vehicle as an alternative to a trust-based Managed Investment Scheme. The Regulations provide for certain matters required or permitted to be prescribed under Chapter 8B, including financial record-keeping and reporting requirements, minimum standards/requirements for custody of CCIV assets and product disclosure.

The *Corporations (Fees) (Corporate Collective Investment Vehicle Framework) Regulations 2022* and *Corporations (Review Fees) (Corporate Collective Investment Vehicle Framework) Regulations 2022* *were also made.*

> *Superannuation trustee investments teams should note the changes.*

APRA Data FAQs

17 March 2022
FAQ

LINK TO DETAILS

APRA continues to update its Frequently Asked Questions – Superannuation Data Transformation.

This month's changes include:

- New Historical Data FAQs: 1.0 that details what data is required for the historical data collection and the due dates for submission.
- New FAQs: SRS 251.2 e that details how RSE licensees should report cases where the assessment of insurance claim did not occur due to the insurance claim being withdrawn or closed.
- New FAQs: SRS 550.0 p that details APRA's expectations on reporting for the strategic sector related fields under SRF 550.0 table 2.

APRA has amended a gap in Historical Data FAQ 1.0 to clarify that APRA expects RSE licensees to submit SRF 550.0 table 1 from the quarter ending 30 June 2014 through to the quarter ending 31 March 2022 and SRS 705.1 from the quarter ending 30 September 2011 through to the quarter ending 31 March 2022, for any investment options other than those underlying a MySuper product or a trustee-directed product.

Superannuation trustees should review the FAQs and assess any impact on reporting.

Non-arm's length expenditure

22 March 2022
Media Release

LINK TO DETAILS

The government has announced that it intends to make legislative changes to ensure that the non-arm's length expense (NALE) provisions operate as intended – to prevent superannuation funds from circumventing contributions caps, and artificially inflating fund earnings through non-commercial dealings – in response to industry concerns over the ATO's interpretation of these provisions in LCR 2021/2 and the impact of the ruling on APRA-regulated funds and self-managed superannuation funds.

The government will consult with industry on the appropriate operation of the non-arm's length income and expense provisions and is committed to ensuring that the legislative changes apply from 1 July 2022.

Superannuation trustees should note the Media Release and keep apprised of any legislative change made by Government.

Financial Advisers

31 March 2022
Legislative Instrument

LINK TO DETAILS

ASIC Corporations (Existing Providers) Instrument 2022/241 was made. The Instrument puts in place interim measures to address an unintended prohibition on Australian financial services (AFS) licensees authorising certain Existing Providers to provide personal advice to retail clients in relation to relevant financial products.

The unintended prohibition applies to Existing Providers who: have not passed the financial adviser exam by 1 Jan 2022; were not authorised to provide Personal Advice on the relevant Exam Cut-Off Day (i.e. either 1 January 2022 or 1 October 2022); and have not obtained an approved degree, qualification or approved course.

The effect of the Instrument is that Affected Existing Providers need only pass the Exam Requirement to be eligible to be authorised by an AFS licensee to provide Personal Advice. Affected Existing Providers must also comply with the Qualification Requirement by 1 January 2026. This effect achieves the intended policy outcome of the Better Advice Act.

Superannuation trustees should ensure advice teams are aware of the relief.

GUIDANCE AND POLICY

Retirement Income Covenant

7 March 2022
Letter

LINK TO DETAILS

APRA and ASIC released a joint letter to all RSE licensees regarding the implementation of the forthcoming Retirement Income Covenant. The letter sets out an indicative implementation pathway for RSE licensees to consider when embedding the covenant into their business operations and communicates their expectations in implementing the covenant.

APRA and ASIC expect that RSE licensees will continue to assess, develop and improve their retirement income strategy, and that RSE licensees will implement their strategies effectively in the best financial interests of beneficiaries and consistently with other regulatory obligations, including *SPS 515 Strategic Planning and Member Outcomes*.

Additionally, APRA and ASIC reiterate their expectation that RSE licensees embed their retirement income strategies in existing business planning and governance frameworks, risk management practices and controls, as well as by assessing the adequacy of resources to support the retirement phase.

APRA intends to commence a consultation later in 2022 to examine how the covenant can be integrated into the superannuation prudential framework.

> *Superannuation trustees should review the letter and consider how the covenant will be implemented and embedded within existing operations. Superannuation trustees should also monitor the release of the consultation and consider providing a response when released.*

Divestment of Russian Assets

3 March 2022
Statement

LINK TO DETAILS

APRA released a statement to provide assurance to superannuation trustees that no action will be taken by APRA in relation to the divestment of Russian asset holdings.

APRA noted the Government's statement confirming the strong expectation that Australian superannuation funds will review their investment portfolios and take steps to divest any holdings in Russian assets. APRA data indicates that superannuation fund holdings of Russian assets are a very small proportion of the $3.5 trillion superannuation asset pool.

APRA will not be taking any action against trustees where trustees have considered such divestments in accordance with their duties.

> *Superannuation trustees should review their investment holdings and consider any action that may be required, including divestment.*

APRA Climate Change Letter

2 March 2022
Letter

LINK TO DETAILS

APRA will commence a voluntary survey of medium-to-large APRA-regulated entities, asking entities to self-assess how they are currently managing climate risks, using APRA's *Prudential Practice Guide CPG 229 Climate Change Financial Risks* as a benchmark. The survey is intended to improve both APRA's and industry's understanding of the approaches being taken to identify, assess and manage climate related financial risks.

APRA intends to provide participating entities with de-identified peer comparison results to enable them to understand how they compare to peers as well as publish information on industry-level insights and themes from the results. APRA will also incorporate insights from the survey into its ongoing supervisory approaches to addressing the financial risks of climate change.

> *Superannuation trustees should note the survey.*

Sustainability of Member Outcomes

29 March 2022
Media Release

LINK TO DETAILS

APRA issued a technical paper that illustrates APRA's detailed insights on the sustainability of member outcome metrics in the 2021 MySuper and Choice Heatmaps with particular attention to challenges faced by small and medium-sized funds and the benefits of mergers and simplification programs.

APRA uses an RSE's rate of growth in: member accounts relative to total member accounts; net cash flows relative to net assets; and net rollovers relative to net assets to measure sustainability. APRA views sustainability as a key indicator of the future ability of a superannuation fund to keep delivering strong financial outcomes to members.

APRA's findings include:

- Scale is an important driver of outcomes for members now and in the future – large RSEs (over $50 billion) are able to leverage benefits of scale as administration and operating expenses (as a % of assets) are significantly less for large RSEs as compared to small RSEs;
- Half of small RSEs face immediate sustainability challenges due to declining net cash flows and member accounts while more than half of medium-sized RSEs ($10 to $50 billion) have adverse trends in sustainability; and
- The majority of mergers and simplification programs lead to immediate fee savings for members. However further benefits of mergers, including improved operating efficiency, will be realised over time particularly where full integration is not achieved on day one.

APRA expects RSE licensees to assess sustainability of member outcomes as part of the annual Business Performance Review.

> *Superannuation trustees should review APRA's paper and consider analysing the sustainability of member outcomes, if they have not done so already.*

Significant Financial Institution

4 April 2022
Consultation

LINK TO DETAILS

APRA is consulting on minor amendments to align and centralise the definition of a significant financial institution (SFI) within the prudential framework. In recent years, APRA has applied this split system where SFIs have been subject to higher requirements as compared to those entities that are not SFIs.

The proposed approach is intended to ensure consistency, create efficiencies and establish a platform for broader application of proportionality within the prudential framework over the longer-term.

The proposed definition, as related to RSEs is total assets in excess of AUD $30 billion in the case of a single RSE operated by an RSE licensee, or if the RSE licensee operates more than one RSE where combined assets of all RSEs exceeds this amount. APRA can also determine an entity to be an SFI, having regard to matters such as the complexity of operations or membership of a group – the same definition included in CPS 511.

> *Superannuation trustees should note the change and review the consultation paper to confirm whether a submission is warranted.*

Quality of Financial Advice Review

11 March 2022
Terms of Reference

LINK TO DETAILS

The Government released the Terms of Reference (ToR) for the upcoming Quality of Financial Advice Review (the Review). The Review will consider how the regulatory framework could better enable the provision of high quality, accessible and affordable financial advice for retail clients, and will investigate:

- Opportunities to streamline and simplify regulatory compliance obligations to reduce cost and remove duplication;
- Where principles-based regulation could replace rules-based regulation to allow the law to better address fundamental harms and reduce the cost of compliance;
- How to simplify documentation and disclosure requirements to reduce unnecessary complexity; and
- Whether parts of the regulatory framework have in practice created undesirable unintended consequences and how those consequences might be mitigated or reduced.

The Review will also investigate the legislative framework for financial advice, including key concepts and terms, consent arrangements for sophisticated investors and wholesale clients, actions and guidance undertaken by ASIC, and the role of financial services and professional association.

The reviewer will provide a report to Government by 16 December 2022.

The Quality of Advice Review Issues Paper was also released with submission due by 3 June 2022.

> *Superannuation trustees should note the Review and consider making a submission.*

AFCA Funding Model

10 March 2022
Consultation

LINK TO DETAILS

The Australian Financial Complaints Authority (AFCA) is consulting on a new funding model to be introduced on 1 July 2022.

The proposed funding model includes the removal of the superannuation levy and a move to a "user-pays" approach where firms who frequently receive complaints will pay a fair share towards AFCA's service, while costs will remain low for firms with few or no complaints.

According to AFCA, impacts for superannuation members include:

- The majority of superannuation members (~82%) will experience reduced total annual fees under the proposed funding model; and
- 25% will only pay the annual registration fee.

The consultation period runs from 10 March to 22 April 2022. AFCA will aim to confirm the final model and release findings and fee guidance in May 2022.

> *Superannuation trustees should note the consultation and potential decrease in fees and consider whether a submission is warranted.*

Virtual Meeting Relief

3 March 2022
Relief

LINK TO DETAILS

ASIC released *ASIC Corporations (Virtual-only Meetings) Instrument 2022/129* which grants relief to allow additional time for certain companies and registered schemes to hold virtual-only meetings, subject to certain conditions.

The relief applies to all listed companies, together with listed and unlisted registered schemes, and provides the option to hold virtual-only meetings until 31 May 2022 (an additional two months). For unlisted companies, the extension is until 30 June 2022, which aligns with the extended deadline for unlisted public companies with 31 December 2021 year ends to hold their AGMs.

To rely on this relief, the directors of the company or responsible entity must pass a resolution that it would be unreasonable for the company or registered scheme to hold a meeting of its members wholly or partially at one or more physical venues, due to the impact of the COVID-19 pandemic.

These changes are in addition to the existing temporary amendments to the *Corporations Act* to permit hybrid and virtual-only meetings until 31 March 2022 and the permanent changes that take effect on 1 April to enable hybrid meetings (and virtual-only if allowed under the company's constitution).

> *Superannuation trustees should note the relief.*

Housing Affordability

18 March 2022
Report

LINK TO DETAILS

The House of Representatives Standing Committee on Tax and Revenue tabled its Report: *The Australian Dream Inquiry into housing affordability and supply in Australia*. The Report makes sixteen recommendations, of which one relates to superannuation.

Recommendation 7 recommends that the Australian Government allow first time home buyers to use their superannuation assets as security for home loans. The policy would allow first time home buyers to use their superannuation balance as collateral for a home, without using the funds themselves as a deposit. The recommendation is dependent on the implementation of other policies to increase the supply of housing.

> *Superannuation trustees should note the recommendation and monitor the introduction of any measures by the Government.*

Third-party Data Governance

1 April 2022
Guide

LINK TO DETAILS

The ATO has issued a supplementary guide for large superannuation funds, managed funds and insurance companies on third-party data tax controls.

According to the ATO, large superannuation funds have a responsibility to develop systems and processes according to their tax risk management framework, which ensures accurate reporting of third-party data and mitigates the risks of errors in income tax reporting and distribution statements.

The Governance over third party data guide is intended to help funds understand what better practice third party data tax controls look like so they can develop or improve their own third-party data tax controls using the principles-based examples in the guide and test the robustness of the design of third-party data tax controls.

> *Superannuation trustee finance and tax teams should review the guide.*

Common Ownership and Capital Concentration

18 March 2022
Report

LINK TO DETAILS

The House of Representatives Standing Committee on Economics tabled its *Report on the implications of common ownership and capital concentration in Australia*. The Report makes three recommendations to the Australian Government:

- Disclosure: a requirement for portfolio managers whose assets surpass a particular threshold to report their shareholdings on a quarterly or annual basis, similar to the 13F disclosure rule introduced by the Securities and Exchange Commission in the United States;
- Proxy Advisors: measures, such as publishing of shareholder voting decisions, to ensure asset managers do not use proxy advisors to collude in their voting decisions; mechanisms to ensure asset managers engage with their owners in making voting decisions; and a requirement that proxy advisors hold a financial services licence for broader services that extends beyond general advice;
- Australian Competition and Consumer Commission (ACCC) Monitoring: a requirement for the ACCC to actively monitor the extent of common ownership in Australian markets and empower it to take common ownership implications into account when assessing merger applications.

> *Superannuation trustees should note the Report and monitor the introduction of any measures by the Government as they are likely to have a direct impact on superannuation trustees.*

CASE LAW AND ENFORCEMENT ACTIVITY

ASIC Enforcement Update

28 March 2022
Update

LINK TO DETAILS

ASIC issued its Enforcement Update for July to December 2021.

Significant enforcement outcomes to deter misconduct, included: (1) total of $84.3 million in penalties imposed, which included penalties against superannuation trustees; (2) $20 million penalty imposed on Colonial First State Investments Ltd for misleading its super members; and (3) criminal outcomes, including the imprisonment of a former financial adviser for facilitating unlawful early access to superannuation.

Two court actions were commenced for superannuation misconduct.

ASIC also filed the last of its civil proceedings stemming from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

OTHER FEDERAL BUDGET MEASURES

Income Stream Commutations

29 March 2022

The Budget announced amendments to Treasury portfolio legislation that clarifies the law to ensure it operates as intended and improves administrative outcomes.

The *Treasury Laws Amendment (Enhancing Tax Integrity and Supporting Business Investment) Bill 2022*, which was introduced in February 2022, makes amendments to the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986* to provide for certain commutations for the purposes of not exceeding the transfer balance cap for market-linked and life expectancy products only.

The changes in the Act are accompanied by the *Treasury Laws Amendment (Allowing Commutation of Certain Income Streams) Regulations 2022*.

> *Superannuation trustees should note the proposed changes and liaise with the administration function or service provider to ensure that consideration is given to any changes to transfer balance cap related reporting for impacted products.*

Gender Equality

29 March 2022

The Budget does not include a measure to pay superannuation on Commonwealth Parental Leave Pay as has been called for by many industry organisations.

"This Budget invests $441.6 million in new and expanded initiatives aimed at increasing women's workforce participation, reducing barriers to women working in the paid workforce, and offering additional assistance to women to build a financially secure future." Of note is an enhancement to the Paid Parental Leave scheme, which will provide eligible working parents with the opportunity to share up to 20 weeks of flexible entitlements between them.

The Women's Budget Statement highlights the impact of the gender cap on superannuation balances resulting from lower workforce participation and differences in earnings – in 2018-19, the gender gap in median super balances for persons 60-64 was 23.4 per cent.

> *Superannuation trustees should note the initiatives.*

Digital Economy

29 March 2022

In order to continue the implementation of the Digital Economy Strategy and drive digital transformation, the Government has committed to provide $130.1 million over 4 years from 2022-23.

The funding includes the following initiatives:

- Implementation of the Government's response to the *Inquiry into the Future Directions for the Consumer Data Right*;
- Shaping global and emerging technology standards;
- Positioning Australia as a world leader in regulating the Digital Economy and new technologies and the development of a Digital Age Policy;
- Continuation of the Digital Technology Taskforce for a further two years;
- Development of the Digital Identity system, including the governance, regulatory frameworks and funding arrangements associated with the Digital Identity legislation.

> *Superannuation trustees is unlikely to be directly impacted by the additional funding, however, trustees should note the Government's focus on digital transformation and consider the possible strategic and operational impacts.*

Payment Times Reporting

29 March 2022

As part of its support for small businesses, the Government has committed $10.4 million to enhance and redesign the Payment Times Reporting Portal and Register to make it easier to view the payment practices of Australia's largest organisations.

The Payment Times Reporting Regime requires businesses with an annual total income of over $100 million to biannually report on their payment terms and practices for their small business suppliers.

Currently, large businesses, which include some superannuation trustees, are required to complete and submit information through the Portal. Information that businesses provide in their reports is to be made available to the public on the Payment Times Reports Register.

> *Superannuation trustees should note the initiative.*

Single Touch Payroll

29 March 2022

The Government will commit $6.6 million over the forward estimates period for the development of IT infrastructure required to allow the ATO to share single touch payroll data with State and Territory Revenue Offices on an ongoing basis.

The funding will be deployed following further consideration of which states and territories are able and willing to make investments in their own systems and administrative processes to pre-fill payroll tax returns with STP data, to reduce compliance costs for businesses.

> *While not directly impacted, Superannuation trustees may wish to communicate the initiative to QAL when further details are confirmed.*

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