

## LEGAL, REGULATORY & POLICY UPDATE

### PENSIONS AND SUPERANNUATION

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- 47<sup>th</sup> Parliament Commences
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#### IN BRIEF

After a few quieter months post-election, July brought about the resumption of Parliament and the introduction of our **first superannuation-related bill** for the year. Treasury has been busy with the announcement of a **review into the YFYS reforms**, consultation on **faith-based superannuation product performance tests** and **Annual Member Meeting changes**.

Meanwhile, the Regulators have released a flurry of material, most notably APRA's proposed new **Operational Risk Standard CPS 230** which promises a significant impact on superannuation trustees, in addition to the announcement of the **Superannuation Data Publications**. ASIC also released updated guidance on **calculators and retirement estimates**, while the ATO clarified **contribution cap and TBAR reporting requirements**.

## MAJOR UPDATES



Commonwealth  
Parliament

July 2022  
*Parliamentary Business*

[LINK TO DETAILS](#)

The 47th Parliament resumed on Tuesday 26 July 2022 with the new Senators being sworn in and the first superannuation-related bill was introduced. The [Treasury Laws Amendment \(2022 Measures No. 1\) Bill 2022](#) seeks to:

- Facilitate the closure and any transitional arrangements associated with AFCA replacing the SCT;
- Delay the commencement of various provisions relating to the modernisation of registries to 1 July 2026 that would have otherwise commenced 21 June 2022; and
- Amend various provisions to provide for certain defined benefit income stream commutations for the purposes of not exceeding the transfer balance cap.

Additionally, the legislative agenda will include a review into the operation of the Your Future, Your Super reforms. Draft legislation has been released to support the review, proposing the introduction of a supplementary performance test for faith-based superannuation products.

*There is some discussion that the legislative agenda of the current Parliament may also include changes to the best financial interests duty, clarifying operation of NALE, and the fairness of concessional tax settings for superannuation funds.*



## Your Future Your Super Review

6 July 2022  
Consultation

[LINK TO DETAILS](#)

Treasury announced a review into the operation of the **Your Future, Your Super** (YFYS) reforms **after the second round** of MySuper performance tests have occurred in **August 2022**.

In announcing the review, Treasury cited industry concerns regarding the YFYS reforms and the **unintended consequences** such as discouraging certain investment decisions or infrastructure investments.

Specifically, the MySuper performance test will be subject to review to determine whether any significant unintended consequences have arisen and to assess how the performance test should be applied to other superannuation products. Notably, the extension of the performance test to **non-MySuper products** will be **paused for 12 months**.

Treasury will also review the **best financial interest duty**, citing concerns regarding the regulatory complexity of these reforms. There is no intention to unwind stapling reforms.

Treasury will be undertaking public consultations later in 2022.

*Superannuation trustees should consider the impact of this announcement, particularly in the context of investment decisions that may have been impacted by the introduction of the performance test.*



## APRA Operational Risk Management Standard

28 July 2022  
Consultation

[LINK TO DETAILS](#)

APRA released for consultation *Prudential Standard CPS 230 Operational Risk Management* (CPS 230), which is designed to strengthen the management of operational risk and supersede *SPS 231 Outsourcing* and *SPS 232 Business Continuity Management*.

The new standard contains a range of requirements across three key areas:

- **Operational Risk Management** – maintain effective internal controls for operational risk, commensurate with the size, business mix and complexity of the activities they undertake;
- **Business Continuity** – identify critical operations, set tolerances to define levels of disruption that would be unacceptable and maintain credible plans to respond to and recover from incidents and events.
- **Service Provider Management** – implement a board-approved service provider management policy and review the risk and performance reporting against these arrangements.

For a more detailed summary of the key items refer to our [summary on LinkedIn](#).

APRA is seeking feedback by 21 October 2022; and planning to finalise the standard in early 2023 and to issue guidance for consultation at the same time, in advance of a January 2024 commencement.

*Superannuation trustees should consider the impact of the proposed changes, specifically in the compliance, risk, legal, procurement, operations and IT. Consideration should be given to the activities that may constitute a 'critical operation' and who the 'material service providers' may be. Trustees should also consider participating in the consultation process.*



## APRA Strategic Planning and Member Outcomes

1 August 2022  
Consultation

[LINK TO DETAILS](#)

APRA released *Strategic planning and member outcomes: Proposed enhancements*, which seeks feedback on the role of strategic planning and member outcomes within the prudential framework. The discussion paper focuses on four key actions that drive decision-making and outcomes:

- **Clearly defining outcomes for members** – quantifiable and objective outcomes which clearly apply to all beneficiaries or specified cohort(s); demonstration of the reasonableness of cohort segmentation; and regard for classes of beneficiaries at or approaching retirement;
- **Soundly run business** – enhanced requirements and guidance informing the management of financial resources on a business-as-usual basis; robust financial projection requirements; and demonstration that fees and costs are consistent with the fee principles set by APRA;
- **Assessment of performance** – clarified requirements related to the approval of the business performance review (BPR), the time for the BPR and its impact on the business plan; and
- **Take meaningful action** – remediation action identified in BPR and associated change to prudential framework to facilitate corrective action and contingency planning.

For a more detailed summary of the key items refer to our [summary on LinkedIn](#). Consultation closes 11 November 2022. APRA intends to utilise the feedback and release a subsequent consultation in early 2023.

*Superannuation trustees should review the proposals within the discussion paper and consider submitting a response.*



## Upcoming Prudential Framework Changes

1 August 2022  
Consultation

[LINK TO DETAILS](#)

In its *Discussion paper – Strategic planning and member outcomes: Proposed enhancements*, APRA referred to the following changes to the prudential framework, which superannuation trustees remain apprised of:

- **SPG 227 Successor Fund Transfers and Wind-ups** – updated to align with SPS 515 framework and new contingency planning obligations in CPS 190.
- **MySuper** – New prudential standard with requirements in relation to transfer of assets where MySuper authorisation is cancelled.
- **CPS 190 Financial Contingency Planning** – requirements for developing credible plans for managing stress that may threaten viability (APRA will soon consult).
- **CPS 900 Resolution Planning** – large and complex entities to be pre-positioned in the event of failure, risk to beneficiaries and financial system stability (next steps communicated in second half of 2022).
- **CPS 230 Operational Risk** – new and updated requirements covering operational risk, business continuity and service provider management (currently under consultation with intended commencement in 2024).

*Superannuation trustees should consider the upcoming changes in the prudential framework and the impact on current processes, including any required implementation activities.*



## Remuneration Prudential Standard

6 July 2022  
Consultation

[LINK TO DETAILS](#)

APRA released for consultation an amended **CPS 511 to set out disclosure requirements** and a draft **CRS 511.0 that sets out reporting requirements**.

The changes to the draft CPS 511 would require all APRA-regulated entities to **publicly disclose information on remuneration design, governance and consequence management**. These disclosures are intended to allow entities to transparently demonstrate how their remuneration practices have strengthened under CPS 511.

APRA proposes **disclosure requirements** that set out how remuneration is aligned with performance and risk, consequence management for poor outcomes, and, for variable remuneration, how non-financial measures are incorporated. The requirements will vary depending on whether the entity is a Significant Financial Institution (SFI).

APRA will publish **centralised statistics** to provide greater comparability of remuneration outcomes, supported by reporting requirements that are proportionate to their size and complexity.

The proposed remuneration disclosure and reporting requirements will take effect a **full 12 months after the implementation of CPS 511** and be due four months after the end of an entity's financial year. RSE licensees who are SFIs would therefore be required to comply by October 2024 and non-SFIs by April 2025 (assuming a 30 June financial year end).

Consultation closes **7 October 2022**.

*Superannuation trustees should review the released material and consider submitting a response. Consideration should be given to the impact of remuneration disclosure and reporting amendments when the new CPS 511 takes effect.*



## Annual Member Meeting Notice Consultation

15 July 2022  
Consultation

[LINK TO DETAILS](#)

Treasury released for consultation draft *Superannuation Industry (Supervision) Amendment (Annual Members' Meetings Notices) Regulations 2022* which outlines a proposal to simplify the disclosure requirements for superannuation **Annual Member Meeting (AMM) notices**.

The draft regulations propose to make the following amendments:

- Remove the requirement to **itemise expenses** relating to promotion, marketing and sponsorship, political donations, payments to industrial bodies, and related party payments;
- Minor technical changes to the **aggregation of categories of expenditure**; and
- Amendment to the definition of '**related party**' to align with the Australian Accounting Standards.

The proposed amendments will take effect from 7 days after the commencement of the Regulations and apply to notices given on or after the Regulations are registered and where the relevant year of income ends on or after 30 June 2022.

For a more detailed summary of the amendments refer to our [summary on LinkedIn](#).

The consultation closed on 28 July 2022.

*Superannuation trustees should review the draft Regulations and consider what changes will be required for the future provision of AMM notices.*



## SPS 530 Investment Governance

19 July 2022  
*Prudential Standard*

[LINK TO DETAILS](#)

APRA finalised and published *Prudential Standard SPS 530 Investment Governance* (SPS 530). This follows a consultation on proposed revisions to SPS 530 in September 2021, with APRA incorporating minor amendments based on industry feedback received. SPS 530 takes effect 1 January 2023.

The key changes to the revised standard include:

- Clarification that **stress-testing programmes** and valuation governance frameworks are to be regarded as components of the overall investment governance framework;
- Processes for ensuring the **quality of data inputs** used in stress testing programs;
- Prescribing liquidity stress-testing as a scenario to be addressed by the stress-testing program;
- Establishment of a **valuation governance framework**;
- Clarification that the standard does not require the establishment of a stand-alone **Board valuation sub-committee**;
- Clarification that regular reporting to the Board for each investment option and MySuper product does not necessarily have to include **detailed reporting on individual investments**; and
- Consistent use of terminology to **'develop, implement and maintain'** frameworks, policies and processes. The addition of 'maintain' emphasises the iterative and dynamic approach that APRA requires RSE licensees to adopt in their approach to investment governance.

APRA also announced plans to release draft *Prudential Practice Guide SPG 530 Investment Governance* (SPG 530) and draft *Prudential Practice Guide SPG 531 Valuations* (SPG 531) for consultation later in 2022, to assist in the implementation and application of the revised standard.

*Superannuation trustees should review their existing stress-testing program against the new requirements and commence steps for the implementation of a valuation governance framework.*



## Supplementary Performance Test for Faith-based Products

20 July 2022  
*Exposure Draft*

[LINK TO DETAILS](#)

Treasury released Exposure Draft legislation seeking feedback on the introduction of a **supplementary performance test for faith-based superannuation products**, which would allow APRA to consider religious affiliation when applying the annual performance test.

This forms part of the Government's announcement into a review of the Your Future, Your Super reforms which spoke to concerns regarding the performance test.

The draft legislation seeks to:

- allow trustees to apply to APRA for faith-based product status;
- require applicants to propose an **alternate index for benchmarking**;
- subject faith-based products to a **supplementary test** that considers their faith-based investment strategy if they **fail the original test**; and
- **exempt** faith-based products from the **consequences of failure** if they pass the supplementary test.

Feedback is requested by 16 August 2022.

*Superannuation trustees that offer faith-based products should consider the changes, specifically the requirement to propose an alternate index.*



## Super Calculators & Estimates

29 June 2022  
*Legislative Instrument*

[LINK TO DETAILS](#)

ASIC made *ASIC Corporations (Superannuation Calculators and Retirement Estimates) Instrument 2022/603*, which continues relief for **retirement estimates and superannuation calculators** (superannuation forecasts) in a single instrument. ASIC also made [Regulatory Guide 276 Superannuation forecasts: Calculators and retirement estimates](#) to support this instrument.

The Instrument provides conditional relief from the AFS licensing requirements of the *Corporations Act 2001* for superannuation trustees who prepare retirement estimates for their members, and for providers of superannuation calculators. Where a trustee or other provider already holds an AFS licence, the Instrument provides relief from the requirements relating to advice in Divisions 2, 3 and 4 of Part 7.7 of the Act.

For a period of approximately **six months** following commencement of this Instrument, trustees and other providers can provide superannuation forecasts under **previous relief arrangements**, while they transition to the new framework.

For a more detailed summary of the amendments refer to our [summary on LinkedIn](#).

*Superannuation trustees should review the new instrument and guidance with particular attention to the defined terms: superannuation calculator; retirement estimate and interactive retirement estimate. It may also be prudent to complete a technical compliance review of any superannuation calculators or retirement income estimates it makes available to members.*



## TECHNICAL UPDATES



### Foreign Financial Service Provider Relief

29 July 2022  
*Legislative Instrument*

[LINK TO DETAILS](#)

ASIC made *ASIC Corporations (Amendment) Instrument 2022/623* ('the Instrument') which preserves the effect of three separate legislative instruments that currently provide relief for **Foreign Financial Service Providers** (FFSP) from the requirement to hold an Australian Financial Services Licence (AFSL) in certain circumstances.

These amendments are technical in nature and are intended to preserve the effect of the **relief** already in place for FFSPs for an **additional 12 months to 31 March 2024**.

The Instrument follows introduction of the [Treasury Laws Amendment \(Streamlining and Improving Economic Outcomes for Australians\) Bill 2022](#) by the previous government which contained a range of relief measures for FFSPs, but was prorogued in April 2022. The introduction of the Instrument is intended to provide the industry certainty in the absence of statutory relief.

*Superannuation trustees should note the extended relief.*



### Contribution Cap Visibility via ATO Online

14 July 2022  
*ATO Update*

[LINK TO DETAILS](#)

The ATO announced new and enhanced features for **contribution cap visibility** through MyGov. Non-concessional contribution cap information can be viewed and managed using ATO Online Services, including:

- The **remaining cap** amount for the financial year;
- Whether the member is **close to exceeding the cap**; and
- If the member **has exceeded the cap**, the amount is displayed.

The existing **concessional contribution cap** and **carry-forward concessional contribution** display information has been enhanced.

*Superannuation trustees should ensure member-facing teams are aware of these changes to direct members to this information and to ensure teams are prepared for managing member enquiries regarding this update.*



### Financial Hardship

26 July 2022  
*ATO Update*

[LINK TO DETAILS](#)

The ATO reminded trustees that **severe financial hardship** or **wanting access to superannuation to assist with general expenses** are **not grounds for compassionate release**.

To release benefits under severe financial hardship, superannuation funds need to be satisfied that the member cannot meet reasonable and immediate family living expenses; and has been receiving relevant government income support payments for a continuous period of 26 weeks and was receiving that support at the time they apply to the trustee.

Alternatively, if the member has reached their preservation age plus 39 weeks, the trustee needs to be satisfied that the member has been receiving relevant government income support payments for a cumulative period of 39 weeks since reaching their preservation age and was not gainfully employed on a full-time or part-time basis at the time of applying for payment.

*Superannuation trustees should ensure that benefit administration teams are aware of the requirements and appropriate processes are in place in relation to members that may be experiencing financial hardship.*



## GUIDANCE AND POLICY



### APRA Superannuation Data Publications

25 July 2022  
*Announcement*

[LINK TO DETAILS](#)

APRA announced the launch of a **series of new data publications** that will become available from **September 2022**. These data publications leverage the data collected through the 10 new superannuation reporting standards introduced by APRA within Phase 1 of the Superannuation Data Transformation project and are intended to provide industry stakeholders with greater transparency and improve data quality across the industry.

This follows a discussion paper and consultation released by APRA in February 2022 that outlined its **publication and confidentiality proposals** in relation to the publication of this data. APRA has issued a **response to the consultation** addressing the feedback received, along with a suite of templates that will be utilised to provide the data.

The publications include **new aggregate industry, fund and product-level information and statistics**, covering information on fees and costs, asset allocation and performance data for all products and investment options as well as information on insurance arrangements, expenses and member demographics.

The first release of quarterly aggregate industry-level publication will occur in September 2022 and on a quarterly basis following submission of underlying industry data via APRAConnect.

The first release of quarterly product-level publication data will be released in the final quarter of 2022, with fund-level publication data released in early 2023.

*Superannuation trustees should ensure they are aware of the new data availability and the fund data that will become publicly available from later this year. The release of this data is expected to be highly useful across various sectors of industry, particularly with regarding to competitor and industry analysis undertaken by Group Strategy teams.*



### Derivatives Use by Superannuation Funds

29 June 2022  
*Letter to Treasurer*

[LINK TO DETAILS](#)

The Council of Financial Regulators (CFR) provided advice to the Treasurer on the outcome of a review into superannuation trustee's use of derivatives.

In November 2021, the then Treasurer wrote to the Council of Financial Regulators asking whether the current use of derivatives by superannuation funds raised any concerns, particularly in terms of:

- operational capability of funds to properly manage large volumes of derivatives transactions;
- prudential implications for the operation of individual funds and the outcomes for members of those funds; and
- any broader implications in terms of financial system stability.

The CFR was asked to provide a response by 30 June 2022. Overall, the CFR found that **derivatives usage** by superannuation funds "**raises no particular concerns at this point in time**" and "**the existing use of derivatives by superannuation funds is consistent with trustees' obligations to act in their members' best financial interests.**"

*Superannuation trustees should note the advice.*





## Payment Times Reporting

22 July 2022  
Consultation

[LINK TO DETAILS](#)

Treasury released a consultation package of three guidance notes for the **Payment Times Reporting Scheme**. The need for updated guidance was identified by the Payment Times Reporting Regulator through screening of the reporting received and the high number of enquiries received from reporting entities and their advisors. The proposed guidance includes:

- **key concepts under the Act including reporting entities, reporting periods, reportable procurement, and governance reporting;**
- **preparation of a report**, including when to prepare a report, the data used to prepare a report, content requirements of reports, the process to submit a report, and updated instructions for completing the payment times reporting templates; and
- **application and notifications**, including how to apply for an extension of time, how to cease to be a reporting entity and registration of a revised payment times report.

The updated guidance is intended to assist reporting entities to meet their obligations and understand the Regulator's expectations when undertaking compliance activities.

Feedback is requested by 2 September 2022.

*Superannuation trustees should review the proposed guidance notes and consider whether their current payment terms and practices reflect the guidance released.*



## Transfer Balance Cap Reporting

15 July 2022  
Guidance

[LINK TO DETAILS](#)

The ATO released a webpage to assist superannuation trustees who may be required to **re-report transfer balance account events** for certain **defined benefit income streams**. This follows the release of [Treasury Laws Amendment \(Allowing Commutation of Certain Income Streams\) Regulations 2022](#) which took effect on 5 April 2022 and enables superannuation trustees to comply with an ATO-issued commutation authority and change the timing of transfer balance credit and debit event reporting.

The ATO also released further guidance regarding market-linked pensions and how transfer balance cap debits are calculated.

*Superannuation trustees should liaise with their administration teams to understand whether any re-reporting or reporting changes are required.*



## Consumer Data Right Sandbox

22 July 2022  
Media Release

[LINK TO DETAILS](#)

The Australian Competition and Consumer Commission (ACCC) launched a **Consumer Data Right (CDR) sandbox**, a free tool that enables existing and potential CDR participants to better test and improve CDR solutions.

The CDR sandbox is a hosted environment that allows participants to setup their own software solutions and communicate with existing mock solutions and other participants within a secure testing environment. This is designed to assist improvement in data quality for data shared between participants.

The CDR sandbox will sit alongside other solution testing tools released by the ACCC, such as mock solutions source code, mock solution container images and the Conformance Test Suite.

*Superannuation trustees should monitor CDR developments to ensure preparedness when the regime becomes applicable to superannuation.*



## Significant Financial Institution Definition

20 July 2022  
*Letter*

[LINK TO DETAILS](#)

APRA issued a letter to all superannuation entities with a response to feedback received on proposed changes to the definition of a significant financial institution (SFI) with the intent to centralise the amended definition for consistent use across the prudential standards.

Given the feedback received by stakeholders supports APRA's proposed changes, APRA is finalising the revised definition without further consultation and will automatically apply the amended definition to relevant prudential standards.

Significant financial institution means an APRA-regulated entity that is either:

- a) not a foreign ADI, a Category C insurer or an EFLIC, and has total assets in excess of:
  - (i) AUD \$20 billion in the case of an ADI;
  - (ii) AUD \$10 billion in the case of a general insurer or life company;
  - (iii) AUD \$3 billion in the case of a private health insurer; or
  - (iv) **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 the combined total assets of all RSEs exceeds this amount;** or
- b) determined as such by APRA, having regard to matters such as the complexity in its operations or its membership of a group.

*Superannuation trustees should note the revised definition and consider whether this change is likely to affect the trustee.*



## AFCA Data Snapshot

20 July 2022  
*Media Release*

[LINK TO DETAILS](#)

AFCA released its **Data Snapshot 2022** and has reported a total of 72,358 complaints received in the 2021-22 financial year, which includes 3,765 superannuation-related complaints. Overall, AFCA identified an overall increase of 3% in the number of complaints received within the last 12 months.

The most common superannuation-related complaints were about service quality (774), delays in claims-handling (737), account administration errors (506), denial of claim (438) and the claim amount (342).

A total of 33% of superannuation complaints were resolved early (at the registration and referral stage) and 54% were resolved by agreement (as opposed to AFCA making a determination); a reduction from 62% in 2021.

The primary cause for the overall increase in complaints received was in relation to general insurance and included events such as an earthquake in Victoria in September 2021, storms and flooding across southern states in October 2021 and again in south-east Queensland and northern NSW in early 2022.

*Superannuation trustees should note the update.*



## ASIC Enforcement Update

28 July 2022  
*Update*

[LINK TO DETAILS](#)

ASIC issued its April to June 2022 Enforcement and Regulatory Update, highlighting the:

- issuance of guidance on how to avoid **greenwashing following** ASIC's review of a sample of superannuation and investment products that identified areas of improvement;
- reminder to superannuation trustees to be transparent in their **communication to members about underperformance**;
- commitment of superannuation trustees to implement changes to improve arrangements for **managing conflicts**; and
- Federal Court imposed **penalties** for incorrect charging of commission payments to superannuation fund members.

*Superannuation trustees should note the update.*



## ABOUT QMV LEGAL

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