

LEGAL, REGULATORY & POLICY UPDATE

PENSIONS AND SUPERANNUATION

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IN BRIEF

It was a busy month with the **re-introduction of FAR and Compensation Scheme of Last Resort** legislation to Parliament after lapsing with the calling of the election earlier this year. New measures relating to **downsizer contributions** were also introduced, along with the **faith-based performance test**.

APRA released an information paper outlining their plans for **modernising the prudential architecture**, while ASIC released the long-awaited **Consumer Remediation** regulatory guide after multiple rounds of consultation.

The Federal Court returned judgments with significant penalties in relation to **ASIC enforcement** action, along with a dismissal of a case from the Royal Commission.

MAJOR UPDATES



Commonwealth
Parliament

September 2022
Parliamentary Business

[LINK TO DETAILS](#)

Status key

- House of Representatives
- Parliamentary Committee
- Senate
- Royal assent

Commonwealth Parliament revised its sitting calendar and sat between 5-8 September, and again between 23-28 September. The following bills remain before Parliament:

- [Social Services and Other Legislation Amendment \(Incentivising Pensioners to Downsize\) Bill 2022](#)
- [Treasury Laws Amendment \(2022 Measures No. 3\) Bill 2022](#)
- [Financial Accountability Regime Bill 2022](#)
- [Financial Sector Reform Bill 2022](#)
- [Financial Services Compensation Scheme of Last Resort Levy Bill 2022](#)
- [Financial Services Compensation Scheme of Last Resort Levy \(Collection\) Bill 2022](#)
- [Treasury Laws Amendment \(2022 Measures No. 2\) Bill 2022](#)

The Senate is also considering a **disallowance motion** in relation to the [Superannuation Industry \(Supervision\) Amendment \(Annual Members' Meetings Notices\) Regulations 2022](#) which were made on 1 September. Consideration of the motion has been postponed until 25 October.

The package of bills comprising the Financial Accountability Regime and Compensation Scheme of Last Resort measures was referred to the Senate Economics Legislation Committee for report regarding the small-account credit contract and consumer leasing provisions attached to the *Financial Sector Reform Bill 2022*. Report is due 20 October 2022.

The particulars of developments in relation to these Bills are detailed below.



Faith-based Product Performance Test

8 September 2022
Bill introduced

[LINK TO DETAILS](#)

The *Treasury Laws Amendment (2022 Measures No. 3) Bill 2022* was introduced to Parliament. Schedule 5 of the bill contains a proposal for a **supplementary annual performance test** for faith-based products.

The draft legislation proposes that APRA may determine a superannuation product to be a **faith-based product** upon receipt of a valid application from a superannuation trustee. The application must be received by 31 January of the relevant financial year for APRA to make a determination, which will be made by 31 March. The faith-based status will remain in place for future financial years until otherwise revoked.

Where a faith-based product fails the original performance test, APRA will reassess the faith-based product against the supplementary performance test. A product will be deemed to have passed the performance test if it passes either the original or supplementary performance test. Details of the supplementary performance test have been deferred to Regulations.

Superannuation trustees should note the legislation. Trustees that issue products that may be considered as faith-based products should consider the likelihood of needing to make an application to APRA and identify and benchmarks or indices which may be relevant to the faith-based investment strategy.



Downsizer Asset Test Exemption

7 September 2022
Bill introduced

[LINK TO DETAILS](#)

The *Social Services and Other Legislation Amendment (Incentivising Pensioners to Downsize) Bill 2022* was introduced to Parliament which is intended to encourage further take up of the **downsizer** provisions.

The bill would give pensioners an **additional 12-month asset test** exemption on their home sale proceeds to give more time to purchase, build, rebuild, repair or renovate a new principal home before their age pension is impacted. The changes will see the deeming rate on principal home sale proceeds intended to purchase a new home significantly lowered from 2.25 per cent per annum to 0.25 per cent per annum.

Commencement of the bill is proposed from the later of 1 January 2023 and one month after the Act receives Royal Assent.

This follows [separate legislation](#) currently before the Senate which proposes to further reduce the eligibility age of the downsizer scheme from **age 60 to age 55**. [Regulations](#) have also been made to support this change which is expected to take effect 1 January 2023.

Superannuation trustees should ensure fund collateral and member-facing representatives are aware of the proposed changes to ensure members are provided accurate information regarding age pension eligibility.



Financial Accountability Regime

8 September 2022
Bill introduced

[LINK TO DETAILS](#)

The *Financial Accountability Regime Bill 2022* (FAR) was re-introduced, seeking to implement several recommendations from the Hayne Royal Commission. The bill is **substantially identical** to the *Financial Accountability Regime Bill 2021* that lapsed when the previous Parliament was prorogued. The only change relates to the commencement date.

The bill applies to '*accountable entities*' which include RSE licensees and their significant related entities and provides for the regulation of directors and senior executives who are referred to as '*accountable persons*'.

The regime commences 18 months after receiving Royal Assent for superannuation licensees.

Separately, Treasury released the [Financial Accountability Regime Minister Rules 2022](#) ('the Rules') for consultation to support the FAR. The Rules prescribe the responsibilities and positions that cause a person to be an accountable person under the FAR and specify the threshold for each type of accountable entity where the enhanced notification obligations take effect (proposed \$10B total assets).

Consultation on the Rules closes 7 October 2022.

Superannuation trustees should review the draft Rules in conjunction with the Bill and consider required implementation activities. Trustees should remain cognizant of the proposed \$10B enhanced notification threshold to ensure that, should this threshold be exceeded, they are ready to adhere to the additional reporting obligations that apply.



Compensation Scheme of Last Resort

8 September 2022
Bill introduced

[LINK TO DETAILS](#)

Also re-introduced after lapsing when the previous Parliament was prorogued, a package of three bills was introduced to enact the **Compensation Scheme of Last Resort** (CSLR). The CSLR will provide compensation to eligible consumers where a determination made by AFCA remains unpaid.

The [Financial Sector Reform Bill 2022](#) introduces the CSLR, while the [Financial Services Compensation Scheme of Last Resort Levy Bill 2022](#) sets out the levy framework and the [Financial Services Compensation Scheme of Last Resort Levy \(Collection\) Bill 2022](#) allows ASIC to collect the relevant levies from applicable institutions.

The CSLR will be regulated by ASIC. The proposed levy will be based on expected claims and will be payable in January each year. A one-off levy is expected to be introduced in August 2023 for the 2023-2024 financial year, with the first ongoing levy commencing January 2024.

Separately, [Exposure Draft Regulations](#) were released to support the operation of the CSLR. Two sets of draft regulations jointly set out the information the CSLR operator must report at the end of each levy period and the sub-sectors to which the levy applies.

Consultation on the draft Regulations closes 7 October 2022.

Superannuation trustees should note the re-introduction of the bill. Outside of the levy payable and minor collateral updates, the impact to superannuation trustees is expected to be minor.



Your Future Your Super Consultation

7 September 2022
Consultation

[LINK TO DETAILS](#)

Treasury released a consultation seeking feedback in relation to the Your Future Your Super (YFYS) reforms introduced in July 2021 and the associated Regulations released shortly thereafter.

The consultation seeks to identify unintended consequences and implementation issues with the reforms. Specifically, feedback is sought regarding the operation of the performance test, the ATO YourSuper comparison tool, stapling and the best financial interests duty. A [technical working group](#) has been convened to explore the operation of the Performance Test and consider key solutions.

Treasury also made the [Superannuation Industry \(Supervision\) Amendment \(Your Future, Your Super—Addressing Underperformance in Superannuation\) Regulations 2022](#) which delay commencement of the Choice performance test for 12 months pending completion of this review. Feedback is requested by 14 October 2022. A review of the YFYS regime was originally announced as an election promise by the government given concerns raised by industry.

Superannuation trustees should consider responding to the feedback with concerns and suggested improvements.



Annual Member Meeting Regulations

2 September 2022
Regulations

[LINK TO DETAILS](#)

Treasury made *Superannuation Industry (Supervision) Amendment (Annual Members' Meetings Notices) Regulations 2022* (the Regulations) which amend the **annual members meeting (AMM) notice disclosure** requirements. The amendments include:

- **Removal of the itemised disclosure** requirements for promotion, marketing, sponsorship expenditure and payments to industrial bodies and related parties;
- Removal of the restriction from providing additional **contextual information** within the short-form summary;
- Clarification that any exchange of goods and services in return for payment relating to **promotion, marketing and sponsorship** constitutes a contract and must be included within the aggregate expenditure amounts; and
- Alignment of the **definition of 'related party'** to the definition within the Australian Accounting Standards.

The amended disclosure requirements apply to a notice given on or after commencement of the Regulations and where the income year ends on or after 30 June 2022.

While the Regulations have been made and are in force, the Senate is to consider a motion of disallowance of the Regulations which has been postponed until 25 October 2022.

Additionally, an [Amendment](#) has been moved in the House of Representatives by MP Stuart Robert to re-instate the previous AMM notice disclosure requirements by moving these requirements, as they previously existed within the SIS Regulations, from the Regulations to the SIS Act 1993. The Amendment also seeks to prevent the introduction of the supplementary faith-based performance test.

Superannuation trustees should review the amended Regulations in preparation for issuing the AMM notice, if it hasn't been issued already, however, remain cognizant that further changes may occur following the forthcoming disallowance motion and proposed amendment.



Modernising Prudential Architecture

12 September 2022
Information Paper

[LINK TO DETAILS](#)

APRA released an information paper outlining its approach to achieve one of their core strategic initiatives for 2022: *modernising the prudential architecture*. The program is a multi-year program that commenced in late 2021 and will seek to make the prudential framework clearer, simpler and more adaptable by reducing undue cost and complexity.

The program will focus on three key areas:

- **Better regulation** by improving the design of the prudential framework, making it simpler to identify and navigate, ensuring guidance is targeted and outcomes-focused and presenting the standards, guidance and advice in a way that is more intuitive for users; **consolidation, simplification and rationalisation in requirements** will likely occur.
- A **digital first approach** whereby digital tools will be explored to identify simplification opportunities; standards will be drafted in a way that **facilitates reg-tech solutions and supports entities governance, risk and compliance systems**; improvements to the APRA website and creation of an internal prototype handbook to facilitate the searching and navigation of standards and guidance.
- **New risks, new rules** which recognise the emerging risks which the prudential framework will need to address, along with new business models and group structures that create new challenges; a **more integrated approach to creating and amending existing requirements**, rather than the existing 'bolt-on' approach to standards.

APRA intends to engage with regulated entities and other key stakeholders to understand pain points with the current prudential framework and assess the appetite for change. Feedback to the consultation is sought by 30 November 2022.

Superannuation trustees should note the announcement and consider submitting a response to the consultation. In practice, the program is likely to see a shift away from document based instruments to online standards with integrated guidance and FAQs. This is likely to be portable to allow integration in RegTech and other applications. Substantively, there will also be changes to prudential standards with the intention of balancing clarity and flexibility.



ASIC Product Dashboard Guidance

30 September 2022
Guidance

[LINK TO DETAILS](#)

ASIC updated its guidance to superannuation trustees in relation to the Product Dashboard requirements in accordance with s 1017BA of the *Corporations Act 2001* for MySuper products.

Information sheet *MySuper product dashboard requirements for superannuation trustees* (INFO 170) gives guidance to industry on what information must be provided by superannuation trustees for each measure in the product dashboard. The information sheet is also accompanied by an [example MySuper product dashboard](#).

Superannuation trustees should review the updated guidance to ensure their Product Dashboard reflects the required information in accordance with ASIC's expectations of the legislation.



GUIDANCE AND POLICY



Financial Contingency and Resolution Planning

6 September 2022
Draft guidance

[LINK TO DETAILS](#)

APRA commenced consultation on guidance to accompany its two new draft prudential standards *CPS 190 Financial Contingency Planning* (CPS 190) and *CPS 900 Resolution Planning* (CPS 900).

Prudential Practice Guides CPG 190 Financial Contingency Planning (CPG 190) and *CPG 900 Resolution Planning* (CPG 900) support the draft standards by providing additional guidance to entities in how best to approach the requirements. APRA has focused on areas where entities have asked for clarification as part of the feedback on the draft standards.

CPG 190 provides a principles-based approach to assist entities to meet the key requirements of the new standards. CPG 900 sets out a framework for how APRA expects to engage with entities in developing and implementing a resolution plan. The draft guidance explains APRA's expectations in resolution planning and sets out the factors that APRA will have regard to in developing resolution plans for individual entities.

The draft standards CPS 190 and CPS 900 were released for consultation in late 2021 and are due to be finalised later this year (CPS 190) and early 2023 (CPS 900).

APRA has also noted the new format used for the guidance and has released an integrated version of each CPG which maps the requirements as per the standard to different sections within the guidance. This integrated format was foreshadowed within APRA's program to modernise the prudential architecture. APRA is open to feedback on readability of the new integrated format.

Feedback for the draft guidance is requested by 6 December 2022.

Superannuation trustees should review the guidance in conjunction with the proposed standards and consider implementation requirements. The new integrated versions of the draft guidance should also be reviewed with consideration of providing feedback to APRA.



ASIC Industry Funding Model

28 September 2022
Consultation

[LINK TO DETAILS](#)

Treasury released a Discussion Paper for public consultation seeking feedback on the ASIC Industry Funding Model (IFM). This follows the release of the [Terms of Reference](#) of the review in August.

The purpose of the Review is to identify any refinements to the IFM that may be required to ensure its settings remain appropriate in the longer-term.

The Discussion Paper is seeking feedback on a range of options, examples of potential changes and questions that are designed to examine and address a range of issues set out in the Review's Terms of Reference.

The Review will also have regard to the temporary levy relief provided to personal financial advice licensees in respect of financial years 2020/21 and 2021/22. Feedback is requested by 28 October 2022.

Superannuation trustees should review the proposals and consider submitting a response to the questions posed.



ASIC Consumer Remediation

27 September 2022
Regulatory Guide

[LINK TO DETAILS](#)

ASIC released *Regulatory Guide 277 Consumer Remediation* (RG 277) which sets out ASIC's guidance for remediations conducted by all financial services licensees, including superannuation trustees. This follows and incorporates the feedback received from extensive consultation undertaken in 2020 and 2021 in which ASIC received 68 submissions from across industry. The guidance includes:

- **Nine principles for conducting a remediation**, including the requirement to adopt a process that is efficient, honest and fair;
- How and when to **proactively initiate a remediation program**, defining 'misconduct or other failure' as the trigger for such activity;
- How **scoping and investigation activities should occur**, including accessing evidence, records and data; investigating the nature and extent of the failure and remediation review period; and how to identify affected customers;
- **Determining an appropriate outcome** using the principle aim to 'return affected customers as closely as possible to the position they would have otherwise been in had the misconduct or failure not occurred'; consideration of different remedies and treatment of lost interest;
- **Methodology and governance considerations**, including the use of assumptions and customer segmentation and customer communications; and
- **Payment of compensation** including treatment of exited members and small compensation amounts payable, with specific instructions for superannuation trustees.

RG 277 supersedes existing *Regulatory Guide 256 Client review and remediation conducted by advice licensees* (RG 256) and will apply to all new remediation undertaken from 27 September 2022. RG 256 will continue to operate for remediations in progress.

ASIC also released an updated [Making it right: How to run a consumer centred remediation](#) information guide which assists licensees with managing the day-to-day design and execution of remediation programs. The updates focus on encouraging licensees to be more transparent about their remediations.

Superannuation trustees should review RG 277 and the associated information guide to ensure any remediation activity performed aligns with ASIC's expectations.



AML/CTF

26 September 2022
Risk Assessment

[LINK TO DETAILS](#)

AUSTRAC released a threat update, which examines threats to the superannuation sector and supplements [Money Laundering and Terrorism Financing \(ML/TF\) Risk Assessment of Australia's superannuation sector](#).

The update highlights that while the type of threats remain the same, the sophistication of activity has increased. The risk of predicate offences, which includes illegal early release of super, identity fraud and scams, has increased. Cybercrime and the evolution of data as a commodity has contributed to this increase, with a transition from targeting member money to targeting data held by the trustee.

Superannuation trustees should consider their exposure to cybercrime with a view towards predicate offences and consider updating AML/CTF processes. Also, as part of any merger activity AML/CTF activity should be considered.



Consumer Data Right

15 September 2022
Consultation

[LINK TO DETAILS](#)

Treasury released exposure draft [Treasury Laws Amendment \(Measures for Consultation\) Bill 2022: Consumer Data Right - Implementing Action Initiation](#) on 26 September 2022 which seeks feedback on creating an 'action layer' within the CDR. The measures propose expanding the CDR from a data-sharing scheme to one which allows consumers to authorise, manage and facilitate transactions as well.

The types of transactions expected to be initiated include payment requests, update contact details across multiple accounts and automatically move funds between accounts to optimise interest or minimise fees. Feedback is sought by 24 October 2022.

The government also released the outcomes of the [Statutory Review](#) of the CDR which made several recommendations for consideration as the development of the scheme continues, including improving data quality.

Additionally, Treasury is seeking feedback and submissions in relation to possible enhancements to the [Consumer Data Right Rules 2020](#) ('CDR Rules'). The consultation is of a general nature, with no specific questions or terms of reference for responding parties to adhere to.

The consultation has been released to ensure the CDR Rules remain fit-for-purpose and support the policy aims of the CDR. Consultation closes on 31 December 2022, however Treasury have noted the intention to conduct ongoing consultation in relation to the CDR Rules, with a further consultation expected to be released in early 2023.

Superannuation trustees should consider these consultations in the context of previously announced extension of the CDR as part of the broader Open Finance policy. Open Finance will see that superannuation trustees are required to make available certain data elements in a prescribed format to authorised data recipients. Consideration should also be given to whether receiving such data with member consent would be appropriate.



Marketing following ASIC Surveillance

8 September 2022
Media Release

[LINK TO DETAILS](#)

ASIC released a media release detailing the findings of its recent surveillance of managed funds' marketing material. The issued identified included inadequate warnings or disclaimers about past or future performance, comparing the product to lower-risk products, indices or benchmarks and the downplaying of other risks when promoting fund benefits.

A summary table lists the 18 funds and the marketing material and/or practices that have been amended or withdrawn in response to ASIC's concerns.

ASIC's Deputy Chair Karen Chester states that "ASIC's surveillance into marketing of fund performance and risk is ongoing. Where we find poor conduct, we will take prompt action to protect consumers and hold responsible entities, trustees and investment managers to account. We will deploy a range of regulatory interventions, from our recent use of stop orders through to court action where warranted." ASIC expects all, including trustees to be familiar with the principles and regulatory guidance about marketing of managed funds and other financial products.

Superannuation trustees should review the media release and associated table of concerns identified by ASIC and consider whether any changes to marketing practices and collateral is required.



ASIC Review of Disability Insurance Claims-Handling

2 September 2022
Review

[LINK TO DETAILS](#)

ASIC released the results of their review into individual disability income insurance claims, which identified further improvements are required across life insurers to protect consumers from unfair practices relating to non-disclosure investigations and physical surveillance activities.

Nearly 4,800 claims received between 1 January and 30 June 2021 were reviewed across 6 major life insurers: AIA Australia, TAL Life Limited, Zurich Australia Limited, MLC Limited, Resolution Life Australasia Limited and Westpac Life Insurance Services Limited.

ASIC's Deputy Chair Karen Chester stated that "ASIC's latest review sought to test whether insurers were now entrenching good practices, especially with insurers now being subject to new claims handling obligations. We also sought to identify any outliers and areas for improvement. Following the review, we remain concerned that some insurers still appear to be 'fishing' for non-disclosures to avoid paying out legitimate claims."

ASIC has written to life insurers covered by the review to outline areas for improvement and communicate their expectations in using investigative tools, including the obligation to handle claims efficiently, honestly and fairly.

Superannuation trustees should engage with their insurers to ensure claims-handling practices undertaken are aligned with ASIC's expectations. Whilst this review focussed on individual disability insurance claims, the learnings are equally relevant for superannuation trustees in relation to claims-handling undertaken for their insured members.

TECHNICAL UPDATES



WA Super Splitting

23 September 2022
Royal Assent

[LINK TO DETAILS](#)

The *Family Court Amendment Act 2022* (WA) received Royal Assent and the [Family Court Amendment Act 2022 Commencement Proclamation 2022](#) was made giving effect to the legislation.

The Act amends the *Family Court Act 1997* (WA) to allow superannuation to be split between separating de facto couples, bringing Western Australia into alignment with the rest of the nation.

The legislation commenced on 28 September 2022 in accordance with the Proclamation.

Superannuation trustees should note the commencement of the legislation and ensure all relevant collateral and administration processes have been updated to reflect the change.



Family Law Valuation

19 September 2022
Legislative Instrument

[LINK TO DETAILS](#)

The *Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Amendment (No. 2) Approval 2022* instrument was made to amend the *Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2003* instrument.

The amendments have been made to ensure that references to the *Family Law Act 1975* ('the Act') are correct, as the Act was recently re-numbered to cater for the introduction of new legislation, including the introduction of Part VIII C of the Act, inserted by the *Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Act 2020*. No further changes have been made.

Superannuation trustees should note instrument.



Confidentiality in APRA Reporting

12 September 2022
Legislative Instrument

[LINK TO DETAILS](#)

APRA made *Australian Prudential Regulation Authority (confidentiality) determination No. 3 of 2022* (the instrument), which determines that certain information provided to APRA under specified reporting standards by financial sector entities, is not confidential.

The instrument is divided into three main parts and covers reporting documents which are:

- subject to the instrument in their entirety;
- partly, and not entirely, subject to the instrument; and
- partly, and not entirely, subject to the instrument where the information relates to a MySuper product.

The Schedule to the instrument sets out the reporting standards impacted and (where relevant) the specific sections to which the instrument applies. The information deemed to be non-confidential will be used as the basis for statistical publications. APRA has retained the confidentiality of SRF 332.0 in its entirety and the majority of SRF 550.

Superannuation trustees should note the designation of reporting standards as non-confidential as this fund data will become publicly available in future.



Financial Reporting Extension

8 September 2022
Legislative Instrument

[LINK TO DETAILS](#)

ASIC released *ASIC Corporations (Amendment) Instrument 2022/719* which provides a temporary extension to allow smaller entities up to one additional month to complete financial reports and have those reports audited in accordance with the requirements in the *Corporations Act* ('the Act').

The amending instrument affects the operation of the Act by allowing unlisted entities one additional month to report to members and lodge reports with ASIC, and for unlisted public companies to hold an Annual General Meeting (AGM). The extended deadlines apply for reporting periods ending between 24 June 2022 and 7 July 2022 (both inclusive).

In providing this extension, ASIC cited a range of factors that may otherwise delay entities in complying with these obligations, including COVID-19 reduced staff numbers through illness and travel restrictions, increased illness due to influenza, companies needing to complete a consolidated financial statement for the first time and amended financial inputs and valuations based on changing economic conditions.

Superannuation trustees should note the extension.



Miscellaneous Amendments

2 September 2022
Exposure Draft

[LINK TO DETAILS](#)

Treasury released Exposure Draft *Treasury Laws Amendment (Miscellaneous and Technical Amendments) Bill 2022* and associated Regulations which seek to make a range of minor and technical amendments to various financial services laws. These amendments include correcting typographical errors, repeal inoperative provisions and make other technical changes to correct unintended outcomes.

Most relevant to superannuation, the draft legislation proposes to:

- prescribe which public sector superannuation schemes can make a voluntary payment of unclaimed money to the ATO;
- require Regulators to publish a notice via notifiable instrument instead of the Gazette;
- clarify (1) that an RSE licensee can hold annual members' meetings both physically and virtually (including hybrid); (2) the place and deemed time of different types of meetings; and (3) notice requirements for different types of meetings.
- improve the flexibility in the administration of the first home super saver scheme (FHSSS) by (1) increasing the discretion of the ATO to amend and revoke FHSSS applications; (2) allowing individuals to withdraw or amend a FHSSS application prior to receiving payment, and re-apply if withdrawn; (3) allowing the ATO to return FHSSS to a super fund where the amount has not yet been released to an individual; and (4) clarify returned FHSSS amounts from the ATO do not count toward an individual's contribution cap.

Consultation closed on 29 September 2022.

Superannuation trustees should note the draft legislation.



ENFORCEMENT ACTIVITY



ASIC Interim Stop Order on Non-Compliant TMDs

30 September 2022
Interim Stop Order

[LINK TO DETAILS](#)

ASIC has made an interim stop order preventing Australasian Property Investments Limited (APIL) from offering or distributing the APIL Essential Retail Income Fund (the Fund) to retail investors because of a non-compliant target market determination (TMD).

ASIC made the interim stop order to protect retail investors from potentially investing in a fund that may not be suitable for their financial objectives, situation or needs.

The fund is currently raising money to purchase a shopping centre. The PDS states the investment is not guarantee, monthly income distribution is based on assumptions, and investors are restricted from withdrawing their money until April 2029.

The corresponding target market for the fund includes investors:

- looking to invest in commercial properties with the prospect of capital growth and a secure income stream;
- who are 'cash rich' entities or retirees looking for a long-term capital investment along with a monthly return;
- with a 'buy and hold' strategy and do not require immediate access to capital; and
- with a need for preservation of capital that accrues capital gains/losses over the lifespan of the investment.

The interim order stops APIL from issuing interests in, giving a product disclosure statement for or providing general advice to retail clients recommending investment in the Fund. The order is valid for 21 days unless revoked earlier.

This follows several other DDO stop orders issued by ASIC to financial entities in relation to the offer and distribution of financial products to consumers as a result of deficiencies within TMDs. ASIC has targeted surveillances underway to check whether product issuers and distributors are complying with DDO and take swift action under DDO where required to prevent consumer harm.



ASIC v AMP

20 September 2022
Judgment

[LINK TO DETAILS](#)

The Federal Court ordered five companies that are or were part of the AMP Limited Group (AMP) to pay a total of \$14.5m in penalties for charging fees for services that were not provided. The Court also ordered AMP publish an adverse publicity statement on its websites for one year.

Between July 2015 and September 2018, AMP deducted \$356,188 in fees across 1,452 superannuation members even though it was aware the members had ceased employment and no longer eligible to access the relevant advice services.

The Court found AMP breached its AFSL obligations to act efficiently, honestly and fairly and to comply with financial services laws. The Court also found AMP failed to investigate whether or not a systemic issue was present, despite receiving many complaints over a lengthy period of time. AMP has remediated affected customers for \$691,032.



ASIC v Dixon Advisory

19 September 2022
Judgment

[LINK TO DETAILS](#)

Dixon Advisory and Superannuation Services Limited (Dixon Advisory) has received a \$7.2m penalty from the Federal Court and has been ordered to pay ASIC's legal costs of \$800,000, after six representatives under their licence failed to act in their client's best interests and failed to provide advice appropriate to their client's circumstances.

On 53 occasions between October 2015 and May 2019, the representatives advised clients to acquire, rollover or retain interests in the US Masters Residential Property Fund (URF) and URF-related products. These financial products were determined to be highly risky.

On 28 occasions advice was provided to Dixon Advisory's clients in contravention of s 961B(1) of the *Corporations Act* (the Act) by virtue of the process undertaken by the representatives. In particular, the failure to take specific steps when determining whether it was appropriate to provide the relevant advice to the clients in the context of their circumstances. The remaining 25 occasions saw advice provided in contravention of s 961G of the Act by virtue of the substance of the advice. The advice provided could not be said to be reasonably capable of being regarded as appropriate to the client.

The Court also ordered that if Dixon Advisory, currently in voluntary administration, resumes providing financial services, Dixon Advisory must have in place appropriate systems, policies and procedures to ensure its representatives act in the best interests of clients.



ASIC v Commonwealth Bank

29 September 2022
Judgment

[LINK TO DETAILS](#)

The Federal Court dismissed proceedings brought by ASIC alleging a breach of conflicted remuneration laws by Colonial First State Investments Limited (Colonial) when making payments to Commonwealth Bank of Australia (CBA) for the distribution of CBA's MySuper product Essential Super.

ASIC alleged that, during the period 1 July 2013 to 30 June 2019, Colonial gave, and CBA accepted, monetary and/or non-monetary benefits which could reasonably be expected to influence financial product advice provided by CBA to its retail clients in relation to Essential Super.

ASIC claimed CBA contravened the prohibition against a financial services licensee accepting conflicted remuneration in accordance with s 963E of the *Corporations Act*.

Within the judgment, Justice Anderson, stated:

"ASIC, in its case, sought to elevate form over substance which was inconsistent with the language and purpose of the Conflicted Remuneration Provisions. ASIC's case ignored the circumstances in which the Essential Super product was developed and distributed, as well as the commercial realities of intercompany transfers within the same corporate group to effect an allocation of costs and revenues when a joint activity is undertaken by different business units and entities within the one corporate group."

ASIC commenced civil penalty proceedings against CBA and Colonial on 22 June 2020. The conduct was identified and referred to ASIC by the Financial Services Royal Commission.



ABOUT QMV LEGAL

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In the spirit of reconciliation QMV Legal acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples today.



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