

## LEGAL, REGULATORY & POLICY UPDATE

### PENSIONS AND SUPERANNUATION

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#### IN BRIEF

After several months of little activity, we finally saw several pieces of superannuation-related legislation progressing through Parliament, including with the **Compensation Scheme of Last Resort** and **financial reporting and auditing requirements** for superannuation trustees.

Additionally, the much-anticipated response to the **Quality of Advice Review** was released by the Government, citing acceptance of many of the recommendations made within the Report. Treasury also released a second consultation to implement **mandatory climate-related financial disclosures**, while clarity was provided to superannuation trustees in relation to **non-arms length income and expense provisions**.

## COMMONWEALTH PARLIAMENT



### Superannuation Bills

June 2023  
Parliamentary Business

[LINK TO DETAILS](#)

#### Status key

- House of Reps.
- Committee
- Senate
- Royal Assent

Commonwealth Parliament sat throughout June, with movement on superannuation-related legislation only occurring in the final week of sittings. One new Bill was introduced, with several key pieces of legislation being passed and awaiting royal assent.

The following Bill was introduced to the House:

- [Treasury Laws Amendment \(2023 Measures No. 3\) Bill 2023](#)

The following Bills remain before the Senate:

- [Financial Accountability Regime Bill 2023](#)
- [Treasury Laws Amendment \(Consumer Data Right\) Bill 2022](#)
- [Treasury Laws Amendment \(2023 Measures No. 1\) Bill 2023](#)
- [Treasury Laws Amendment \(Modernising Business Communications and Other Measures\) Bill 2023](#)
- [Housing Australia Future Fund Bill 2023](#)

The following bills passed Parliament and are awaiting Royal Assent:

- [Fair Work Legislation Amendment \(Protecting Worker Entitlements\) Bill 2023](#)
- [Treasury Laws Amendment \(2022 Measures No. 4\) Bill 2022](#)
- [Treasury Laws Amendment \(Financial Services Compensation Scheme of Last Resort\) Bill 2023](#)
- [Financial Services Compensation Scheme of Last Resort Levy Bill 2023](#)
- [Financial Services Compensation Scheme of Last Resort Levy \(Collection\) Bill 2023](#)

Parliament is not due to sit again until the first week of August.



## MAJOR UPDATES

Quality of Advice  
Review Response13 June 2023  
*Response*[LINK TO DETAILS](#)

Treasury released the Government **response to the Quality of Advice review** as part of its *Delivering Better Financial Outcomes* package. The Government confirmed it intends to implement, in full or in principle, 14 of the 22 recommendations made within the Review. No recommendations were ruled out.

The implementation will be progressed in three streams, each stream covering several recommendations made within the Review:

- **Removing red tape:** removing safe harbour steps, streamline ongoing fee renewal and consent requirements into a single form, Statements of Advice will be replaced with a new fit-for-purpose record of advice, clarifying conflicted remunerations rules, and standardisation of retail vs wholesale client definitions;
- **Expanding access to retirement income advice:** expand the superannuation industry's role in the provision of advice through amending the current restrictions on collective charging and clarify rules for the payment of advisor service fees; and
- **New channels for advice:** examine the role for other institutions to provide advice and consult on other broad recommendations such as changing the definition of personal advice, removal of the general advice warning, introducing a good advice duty.

Legislation to support the reforms will be introduced in the latter half of 2023 and early 2024. The Government confirmed it will issue its final response later in 2023.

*Superannuation trustees should review the response and consider the impact of any change arising from the reforms, including any strategic opportunities which may be presented by the changes. Legislation change and supporting consultations are expected to commence in the near future.*

ALRC Interim Report  
C Released22 June 2023  
*Report*[LINK TO DETAILS](#)

The Australian Law Reform Commission (ALRC) released *Financial Services Legislation: Interim Report C* which was tabled in Parliament by the Attorney-General. This report forms part of the broader and long-running *Review of the Legislative Framework for Corporations and Financial Services Regulation* and includes proposals for **restructuring and reframing financial services legislation** to make it easier to navigate and understand.

The report contains 4 recommendations, 14 proposals and 1 question, and provides further detail about how the ALRC's broader proposals for reform may be implemented, including a detailed implementation roadmap.

The ALRC is seeking feedback on the proposals by 26 July 2023. The ALRC is due to provide the consolidated final report to the Attorney General by 30 November 2023.

*Superannuation trustees should review the proposals and consider submitted a response if warranted. The proposed changes would not intend to have a substantive impact, but are intended to improve the accessibility and navigability of the law, which will be of practical significance.*



## Non-Arms Length Expenditure

19 June 2023  
Consultation

[LINK TO DETAILS](#)

Treasury released Exposure Draft *Treasury Laws Amendment (Measures for Consultation) Bill 2023: Non-arm's Length Expense Rules for Superannuation Funds* which seeks to amend the Non-Arm's Length Income (NALI) and **Non-Arms Length Expenditure (NALE)** rules.

The Draft proposes to exempt large APRA-regulated funds, including exempt public sector superannuation funds, from the non-arm's length income rules related to non-arm's length expenses, although these funds will still be subject to the remaining non-arm's length income rules for income derived on a non-arm's length basis.

The Draft would also introduce different treatment for small APRA funds and SMSFs depending upon they type of expense incurred:

- **General expense, being one that is not related to gaining or producing income from a particular asset of the fund:** the amount of income that will be taxed as non-arm's length income will be twice the difference between the amount of the expense that might have been expected to be incurred had the parties been dealing at arm's length, and the amount the entity did incur, or twice the amount that would be expected to be incurred if no expense was incurred;
- **Specific expense, being any other kind of expense:** the existing treatment will continue to apply.

A cap would be imposed on the amount of a small complying superannuation fund's non-arms length component at an entity's taxable income for the year, not including any assessable contributions or deductions against assessable contributions.

The measures would apply to income derived in the 2023-24 income year or a later income year, and expenses incurred or expected to have been incurred on or after 1 July 2023.

*Superannuation trustees should review the draft legislation and engage with internal finance teams to consider the potential impact.*



## APRA Quarterly Superannuation Product Statistics

30 June 2023  
Publication

[LINK TO DETAILS](#)

APRA released the inaugural *Quarterly Superannuation Product Statistics (QSPS)* report. The QSPS utilises new reporting standards implemented in Phase 1 of the **Superannuation Data Transformation (SDT)** program and aims to increase the breadth, depth and quality of data available to superannuation trustees, fund members and other stakeholders.

The QSPS lists all superannuation products offered by each APRA-regulated fund, and contains granular information on fees and costs, investment performance, investment strategy and asset allocation for a range of products and investment options.

APRA intends to expand the QSPS on a progressive basis to include additional product segments of the superannuation industry, enhanced demographic data for MySuper products, additional fee disclosures, and information on default insurance offerings to superannuation members.

*Superannuation trustees should review the statistics to familiarise themselves with the new reporting offered by APRA.*



## Mandatory Climate-Related Financial Disclosures

27 June 2023  
Consultation

[LINK TO DETAILS](#)

Treasury released *Climate Related Financial Disclosure* for consultation which seeks further feedback on a range of proposals for introducing mandatory **climate-related financial disclosures** for Australian entities, including superannuation trustees.

The paper sets out the information required to be reported, noting any new requirements should be aligned with international reporting practices. This follows the [recent release](#) by the **International Sustainability Standards Board (ISSB)** of sustainability and climate-related financial disclosure standards which will act as a global baseline for such disclosure.

The information required to be reported is proposed to include:

- **Material climate-related financial information**, being information that if omitting, misstating or obscuring could reasonably be expected to influence decisions of primary users of general financial reports;
- **Governance processes, controls and procedures** used to monitor and manage climate-related financial risks and opportunities;
- **Scenario analysis**, initially qualitative but graduating to quantitative;
- **Climate resilience assessments** against at least two possible future states;
- **Transition plans** that include information about offsets, target setting and risk mitigation strategies, and any **climate-related financial targets and progress** toward meeting these targets;
- Scope 1 and 2 emissions would be required to be reported from commencement, with graduation to reporting scope 3 emissions.

The disclosure would form part of the entity's existing corporate reporting practices and published in the annual report, with the option to report some information in a separate report. Assurance requirements are also considered, with acknowledgement a capability uplift will be required to ensure assurance participants have the requisite climate-related skills.

**A three-phased implementation approach is proposed** based on entity size, with the first group of impacted entities determined through two of the following three thresholds: (1) has over 500 employees, (2) the consolidated gross asset value of the company and those it controls is \$1B or more at the end of the financial year, and (3) the consolidated revenue for those same companies is \$500m or more. Groups 2 and 3 follow the same criteria, however with lower thresholds applicable.

Reporting would commence from 2024/25 onwards for Group 1 entities, with all relevant entities reporting by 2027/28 financial years.

Detailed reporting standards will be developed by the Australian Account Standards Board (AASB), pending the [enabling legislation](#) passing Parliament. Feedback on the consultation is sought by 21 July 2023.

*Superannuation trustees should familiarise themselves with the proposed reporting requirements and consider these against current reporting capabilities. Service providers and external stakeholders will need to be engaged to fulfill the reporting requirements, so planning and early engagement is recommended given the significance of the requirements. Consideration should be given to disclosure obligations and integration of disclosure from investments.*



## Performance Test

16 June 2023  
Announcement

[LINK TO DETAILS](#)

The Assistant Treasurer and Minister for Financial Services announced changes will be made to the **annual performance test** for the coming August 2023 assessment. This follows the release of the [Your Future Your Super: Summary of Issues](#) report and corresponding [consultation](#) on the proposed reforms to the performance test in April, which identified several **unintended consequences** of the performance test as legislated.

Regulations will be released shortly and will include:

- Progressive increase to the **lookback period** from 8 to 10 years;
- Content changes to the **notification letter** when a trustee fails the performance test to cater for trustee directed products (TDPs);
- Changes to the **RAFE benchmarks** for platform and non-platform TDPs against a median fee relevant to its category; and
- Realignment of **key performance benchmarks** in accordance with the proposals within the [Exposure Draft](#).

The Government flagged future consultation will occur to further refine the test to enable greater scrutiny of underperformance of products.

*Superannuation trustees should note the announcement and remain abreast of further announcements and release of the Regulations. The Exposure Draft regulations should be re-reviewed as this provides the best indication of the specific reforms expected when the Regulations are released.*



## First Home Super Saver Scheme

14 June 2023  
Legislation Introduced

[LINK TO DETAILS](#)

The *Treasury Laws Amendment (2023 Measures No. 3) Bill 2023* also contained changes to the **First Home Super Saver Scheme (FHSSS)**. Schedule 4 of the Bill would:

- Allow individuals to **amend and revoke** a FHSSS application, with any FHSSS amounts returned to a superannuation fund by the ATO categorised as non-assessable income;
- Increase the period individuals have to request a release authority after entering a contract for their home from **14 days to 90 days**; and
- Introduce **limited transitional provisions** that allow past users of the FHSSS to take advantage of the amendments.

The proposed changes largely support a recent [Law Companion Ruling Addendum](#) released by the ATO in relation to the FHSSS which clarified their position in relation to several matters.

*Superannuation trustees should review the Bill and ensure the necessary changes to processes or systems occurs. Consideration should also be given to changes to fund collateral or website content.*



## Financial Advisor Education Standards

14 June 2023  
*Legislation Introduced*

[LINK TO DETAILS](#)

The Government introduced *Treasury Laws Amendment (2023 Measures No. 3) Bill 2023* to Parliament. The Bill contains several measures in relation to financial advisor education requirements. Schedule 2 of the Bill would introduce the 'experienced provider pathway' into the *Corporations Act* to provide a new pathway for meeting the education and training requirements that currently exist. This would recognise advisors who:

- have **10 or more years full-time cumulative experience** as a financial advisor between 1 January 2007 and 31 December 2021, and
- have **no recorded disciplinary actions** on the Financial Advisors Register before 31 December 2021.

Financial advisors seeking to rely upon the experienced provider pathway must **self-declare** they have met the requirements and a notice must be lodged with ASIC confirming as such.

Lodgement with ASIC would not be required until 1 July 2024, but must occur prior to the 1 January 2026 cut-off date for a financial advisor to meet the education and training requirements. All advisors must still meet the continuing professional development and exam requirements.

These measures were foreshadowed in [Exposure Draft legislation](#) released in April 2023.

*Superannuation trustees should note the legislation and consider any impacts to existing recruitment policies and compliance assurance measures.*



## Duplicate Member Accounts Review

29 June 2023  
*ASIC Review*

[LINK TO DETAILS](#)

ASIC performed a review of nine superannuation trustees' approach to **identifying and consolidating duplicate accounts** within the fund, finding poor trustee practices resulting in consumer harm. The *SIS Act* requires trustees to establish rules to identify and merge duplicate superannuation accounts at least annually where it is in the best interests of members. ASIC's review identified the following concerns:

- **Trustees should have documented business rules** for identifying and consolidating multiple accounts on an annual basis across all member cohorts; three trustees observed had no business rules documented and others excluded certain member cohorts from the process;
- **A best interests assessment must be performed** to assess whether merging accounts is appropriate; one trustee did not consider this;
- **Members should receive communication** regarding duplicate accounts; all trustees provided confirmation to the member with six trustees also seeking direction prior to the merge; and
- **Trustees must have oversight** and not rely on external administrator policies; three trustees also had a process to identify duplicate accounts upon account creation which is considered good practice.

As a result of the review, three trustees are undertaking remediation of members affected by the trustee's failure to comply with the law.

*Superannuation trustees should ensure unintended duplicate account policies are in place, and the practices undertaken in relation to this policy is actively monitored and oversight of service provider involved is adequate.*



## Modernising Australia's Payment System

7 June 2023  
*Strategic Plan*

[LINK TO DETAILS](#)

The Government released a *Strategic Plan for Australia's Payments System* ('Plan') which presents the Government's key priorities and initiatives for Australia's **payments system**, focussing on the continued transition to digital payment processing.

Whilst broadly applicable, of relevance to superannuation is the Government's stated intention to transition from the Bulk Electronic Clearing System (BECS) and to the **New Payments Platform (NPP)**.

Specifically, the Plan acknowledges some large business and government users may require additional support to transition to the NPP as BECS is heavily embedded within several processes including superannuation, payroll and social security payments. Additionally, transitioning these payments onto the NPP requires capacity upgrades for the financial institutions that act as NPP Participants.

Industry is expected to settle on a transition plan to **move away from BECS by the end of 2023**. The Plan also contains other relevant changes to the payments system that are likely to impact superannuation trustees, including the intended phasing out of cheques from the Australian economy by 2030 at the latest.

*Superannuation trustees should remain abreast of Government's announcements in relation to the Payments System and consider engaging with service providers to ensure preparedness for changes as announced. There are opportunities and risks associated with faster pace of transactions and ability to embed files within payment transactions..*



## Financial System and Regulator Metrics Framework

16 June 2023  
*Framework*

[LINK TO DETAILS](#)

The Financial Regulator Assessment Authority (FRAA) released *Draft Financial System and Regulator Metrics Framework* for consultation, which seeks feedback on the metrics used to assess the **effectiveness and capability of APRA and ASIC**.

The metrics framework will assist the FRAA by providing an additional input on the regulator's effectiveness and capability, where the information and considerations are relevant to the scope of a FRAA review, and the regulators' statutory mandates, stated objectives and activities.

The metrics framework was not used in the FRAA's inaugural review of APRA, which the FRAA will deliver to Government by 30 June 2023. In the period between the 2023 APRA review and the FRAA's next ASIC review, the FRAA will continue to refine the metrics framework, including through this public consultation process.

*Superannuation trustees should note the consultation and consider a submission if warranted.*



## Consumer Data Right Review

7 June 2023  
Response

[LINK TO DETAILS](#)

The Government released its response to the *Statutory Review of the Consumer Data Right (CDR)* ('Review') which was released in September 2022. Relevant to the superannuation industry, the Government announced they are **pausing the implementation of the CDR across the superannuation**, insurance and telecommunications sectors to allow time for the CDR to mature across the banking and energy sectors and to implement lessons learned to date.

The Government also confirmed the following actions:

- the intended **expansion of the CDR to action initiation will continue**, with consultation on the assessment and development of a framework to support action initiation to be undertaken;
- a **cyber-security assessment of the CDR** was undertaken, with further security improvements expected to be delivered across CDR agencies to help protect against threats in the changing data landscape;
- **development of a CDR trusted brand strategy** to raise consumer awareness and adoption of the CDR and assist consumers to identify where they can access CDR-enabled providers, products and services.
- intention to release a discussion paper in the second half of 2023 to consult on policy options for regulating screen scraping, as the CDR is expected to become the alternative of choice posing lower security risk;
- focus on improving the data quality of the CDR, with the ACCC continuing to engage with industry representatives; and
- prioritising Government participation in the CDR.

A strategic assessment of the CDR toward the end of 2024 is planned which will inform Government of the future expansion into other industries, including superannuation.

*Superannuation trustees should note the delayed commencement and ensure portfolio budgets and planning reflect the announcement.*





## GUIDANCE AND POLICY



### ASIC Review on Handling Money When Received

26 June 2023  
Review

[LINK TO DETAILS](#)

ASIC called on superannuation trustees to ensure they are meeting their legal obligations when dealing with **client money** received for a new or increased product interest.

ASIC reviewed twelve superannuation trustees with both internal and outsourced administration. ASIC identified that all but one trustee failed to ensure their practices or disclosure aligned with their obligations. Four main issues were identified:

- **Using a non-compliant account to hold money:** some trustees did not use an account that met requirements, such as non-trust accounts;
- **Not holding money for the required time:** the money was transferred to another non-compliant account prior to the interest being issued or increased, indicating some trustees need to revise their incoming cashflow management practices to ensure compliance;
- **Failure to identify money subject to the requirements:** instances identified where no daily monitoring occurred for money received or trustees were unaware of administrator practices in this regard; and
- **Inadequate disclosure to customers:** insufficient disclosure observed in most instances, with inadequate references to the payment of interest prior to a product being issued.

ASIC also engaged with major auditing firms and industry bodies to reiterate the requirements and the role auditors can play to ensure compliance with the requirements.

*Superannuation trustees should review their incoming cashflow management policies and disclosure and ensure the issues identified by ASIC are appropriately managed. Engagement with outsourced administrators will be required where applicable.*



### Review of the ASIC Industry Funding Model

26 June 2023  
Report

[LINK TO DETAILS](#)

The Government released the final report on the **Review of the ASIC Industry Funding Model (IFM)**. This follows a prior consultation and [Discussion Paper](#) seeking stakeholder views in September 2022.

The Review found the settings to be broadly appropriate, but made **ten recommendations**, four of which were directed to ASIC, including:

- Spreading the costs across a wider population or over time;
- Undertake further consultation to ensure sub-sector definitions, metrics and formulas used to calculate levies are fit-for-purpose;
- Delegate fee-setting power to ASIC; and
- ASIC to enhance reporting, transparency and consultation on the IFM.

Separately, the Review considered the temporary levy relief for personal financial advice licensees that was in place in 2020/21 and 2021/22 financial years and determined not to extend the relief further. The Review recommends each of the four financial advice sub-sectors be reviewed to determine whether the metrics are appropriate. This will form part of the Quality of Advice Review responses.

*Superannuation trustees should note the Report.*



## APRA Your Future Your Super Guidance

22 June 2023  
Updated FAQs

[LINK TO DETAILS](#)

APRA released **six new and four updated Frequently Asked Questions (FAQs)** in relation to the Your Future Your Super (YFYS) regime. The new FAQs confirm:

- **all investment options must be reported as a TDP** for the 2023 Performance Test unless carved out under SIS regulation 9AB.2;
- a **managed investment scheme (MIS)** on an investment menu is generally **subject to the Performance Test** and the legal characterisation of the interest in the MIS is not relevant for assessing whether the option is a TDP;
- the **resubmission of SRS 550.0 should not be required** due to the change in covered asset classes within the Regulations, and how APRA will determine the Strategic Asset Allocation for disaggregated asset classes; and
- The specific data within APRA's reporting forms used to calculate a product's performance test result.

APRA also confirmed through updated FAQs:

- APRA intends to publish the performance test values as part of the MySuper and Choice Heatmaps;
- The **benchmark RAFE** used for the 2021-22 performance test was 0.25948%;
- the Performance Test will use the data collected as part of the SDT project, with the exception of SRF 533.0 Item 2.1; and
- how APRA intends to manage the flexibility to **combine performance histories of TDPs**, referring trustees to the previously released [Information Paper](#).

*Superannuation trustees should ensure project resources are aware of the new and updated FAQs in preparation for the extension of the Performance Test to include Choice products from 1 July 2023.*



## APRA Stakeholder Survey Results

23 June 2023  
Announcement

[LINK TO DETAILS](#)

APRA released the results of its biennial 2023 *Stakeholder Survey* which assesses its **performance and effectiveness** across the banking, insurance and superannuation industries.

Overall, support for APRA's supervisory activities was strong, however lower levels of support were observed in relation to the cost and burden of complying with APRA regulatory requirements.

In particular, superannuation trustees gave the lowest ratings for almost all items in the 2023 survey, with smaller trustees less positive than larger trustees.

APRA identified this to be a result of the significant regulatory change in the superannuation industry, resulting in heightened scrutiny and tougher requirements aimed at boosting member outcomes.

*Superannuation trustees should note the survey results.*



## Superannuation CEO Roundtable and Cyber Resilience

9 June 2023  
*Discussion Notes*

[LINK TO DETAILS](#)

APRA and ASIC held a joint **CEO Roundtable** on 29 May 2023 which focussed on cyber resilience and cyber threats. The Regulators emphasised the importance of early regulatory engagement in the event of a cyber-attack and detailed lessons learnt through recent cyber-attacks, including:

- trustees should have **strong data and IT systems governance measures** to reduce the risk of a significant compromise, including **decommissioning legacy systems** and ensuring adequate service provider oversight;
- **response plans should be tested** and address governance and decision-making, business continuity and contingency planning, and communication strategies at a minimum;
- the **effectiveness of simulations** and cyber threats and trustee responses to ensure response plans are fit for purpose, and establishing a **clear delineation between board and management** responsibilities;
- trustees must consider member impacts and make decisions in the best financial interest of members, whilst also providing timely and accurate communications and ensuring appropriate resourcing.

The Regulators also urged industry participants to consider establishing, as soon as practicable, a **cross-industry forum** to discuss trends and share learnings in relation to cyber risks and incidents to the extent privacy and commercial considerations would allow.

Separately, ASIC invited all entities to assess their cyber resilience and participate in the [ASIC cyber pulse survey](#) which will measure entities' current cyber security and controls, governance arrangements, and incident preparedness.

*Superannuation trustees should consider their cyber threat preparedness and how well it aligns with ASIC and APRA's recommendations. Consideration should also be given to participating in ASIC's cyber pulse survey.*



## Superannuation Data Transformation

21 June 2023  
*FAQs Updated*

[LINK TO DETAILS](#)

APRA released one updated **Frequently Asked Question (FAQ)** in relation to the Superannuation Data Transformation project. The updated FAQ makes reference to APRA's approach to the revocation of superannuation reporting standards.

Specifically, APRA confirmed it intends to revoke *Reporting Standard SRS 530.0 Investments* and *Reporting Standard SRS 534.0 Derivative Financial Instruments* in August 2023. RSE licensees still need to report under SRS 530.0 and SRS 534.0 for the quarter ending 30 June 2023.

APRA also referred interested parties to APRA's Letter to RSE licensees [Revocation of superannuation standards](#) for information about APRA's approach to the revocation of Superannuation Reporting Standards (SRS).

*Superannuation trustees should ensure finance and SDT project teams remain abreast of the announcements by APRA to ensure correct reporting.*



## APRA Statement of Intent

7 June 2023  
*Statement*

[LINK TO DETAILS](#)

APRA released a **Statement of Intent** in response to the Government's [Statement of Expectations](#). APRA responded to the Government's policy priorities by confirming it will:

- maintain a core focus on the ongoing **resilience of the industries** it regulates for the benefit of customers and members;
- promote prudent practice and transparency regarding **climate-related risks** in the financial system;
- continue to monitor superannuation transparency and efficiency and seek to reduce the exposure of members to underperformance and sub-standard practice in relation to expenditure;
- take steps to improve the resilience of the financial system to cyber threats through its cyber security strategy; and
- respond to the changing participants in the financial system by engaging with various stakeholders on reforms to modernise the payments regulatory framework.

*Superannuation trustees should note the announcement.*



## AUSTRAC E-Learning Modules

8 June 2023  
*Announcement*

[LINK TO DETAILS](#)

AUSTRAC released two new e-Learning modules to supplement the existing suite of online courses available for reporting entities to increase their AML/CTF compliance knowledge. The two new modules are:

- **Enhanced Customer Due Diligence (ECDD)** – what is ECDD and when it applies, what constitutes appropriate ECDD, how to determine the source of wealth and source of funds, tipping off and record keeping;
- **Suspicious Matter Reporting (SMR)** – information about SMRs, how to provide a high-quality SMR and when to submit a SMR to AUSTRAC.

The new modules are applicable to all businesses regulated by AUSTRAC. Separately, AUSTRAC [announced](#) it will be updating its website to provide industry-specific landing pages and improved navigability.

*Superannuation trustees should consider whether to incorporate the new e-Learning modules into existing AML/CTF training for staff, noting these modules do not replace mandatory AML/CTF risk awareness training.*



## APRA Infringement Officers

7 June 2023  
*Legislative Instrument*

[LINK TO DETAILS](#)

The *Superannuation Industry (Supervision) (Infringement Officers) Determination 2023* was made which determines which APRA staff members or class of persons may be **designated as infringement officers** for the purposes of exercising powers under Part 22 of the SIS Act. This Determination repeals the prior [Determination that APRA staff members of a class are to be infringement officers](#) which was made in 2013 but never registered.

Both the 2013 determination and the 2023 determination broadly specify the same class of APRA staff members, with the 2023 instrument determining APRA staff members holding, occupying or performing the duties or an office or position titled General Manager or Executive Director.

*Superannuation trustees should note the Instrument.*



## TECHNICAL AMENDMENTS



### Minimum Pension Drawdown Rates

21 June 2023  
*Announcement*

[LINK TO DETAILS](#)

The ATO issued a reminder to superannuation trustees that the **minimum drawdown requirements** for account-based pensions and similar products will change for the 2023/23 financial year.

The minimum drawdown was temporarily reduced by 50% for the 2019/20, 2020/21, 2021/22 and 2022/23 financial years as a result of the COVID-19 pandemic, but this reduction will not apply from 1 July 2023. The [updated drawdown](#) requirements have been published for trustee's reference.

The ATO also took the opportunity to remind trustees to ensure all account-based pension members have been paid their minimum drawdown by 30 June 2023.

*Superannuation trustees should note the announcement and ensure the necessary system changes and disclosure is updated.*



### Family Law Interest Rates

30 May 2023  
*Legislative Instrument*

[LINK TO DETAILS](#)

The *Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2023* was released which adjust the **interest rate** applicable to certain superannuation **Family Law splits**. The determinations relate to orders or agreements providing for a base amount split of future superannuation benefits, payable in respect of a defined benefit superannuation interest or an interest in a SMSF.

The Australian Government Actuary determined the interest rate for the adjustment period, being the financial year beginning on **1 July 2023**, is **0.059**. This rate is 2.5 percentage points above the percentage change in the original estimate of full-time adult ordinary time earnings for all persons in Australia as published by the Australian Bureau of Statistics for the year ending with the November 2022 reference period.

The method of calculating the rate where the period is less than 12 months has also been determined within the instrument.

*Superannuation trustees should ensure systems and processes have been amended to correctly calculate defined benefit family law splits.*



### Advice Fee Consent Arrangements

28 June 2023  
*Legislative Instrument*

[LINK TO DETAILS](#)

The [ASIC Corporations and Superannuation \(Amendment\) Instrument 2023/512](#) ('2023/512') was made which amends [ASIC Corporations \(Consent to Deductions - Ongoing Fee Arrangements\) Instrument 2021/124](#) and [ASIC Superannuation \(Consent to Pass on Costs of Providing Advice\) Instrument 2021/126](#) in relation to the content of **financial advice consent**.

For an advice fee consent to be valid under each amended instrument, the consent must contain the name of the account holder or member, and the name and contact details of the fee recipient or financial advice provider.

The amendments clarify that where these details may change after the consent is given, the consent remains valid as it is based on the details in place at the time.

Where any other changes to the consent arrangements occur, a new consent is required.

*Superannuation trustees should note the clarification and ensure current consent arrangements continue where these details may change.*



## ASIC Cost Recovery Implementation Statement

28 June 2023  
Statement

[LINK TO DETAILS](#)

ASIC published the 2022/23 *Cost Recovery Implementation Statement* (CRIS) which details ASIC's estimated levies by industry subsector. The CRIS acts as a guide, within final levies based on ASIC's actual cost of regulating each subsector based on business metrics submitted by entities. The final levies will be published in December 2023 and invoiced between January and March 2024.

For the superannuation sector, the **estimated cost recovery amount is \$28.798 million** and applicable to 87 entities. The estimated levy payable is the minimum levy of \$18,000, plus \$13.68 per \$1m of assets above the graduated levy threshold of \$250m.

To address recommendations outlined in the Government's [Review of the ASIC Industry Funding Model Final Report](#), ASIC and Treasury will establish a five-yearly consultation process with industry to examine the policy settings of the IFM. This will replace the annual consultation CRIS that ASIC previously released prior to the final CRIS.

The CRIS also details ASIC's focus areas for the 2023/23 financial year for which the levies are intended to fund.

*Superannuation trustees should ensure finance teams are aware of the estimated levies to ensure budgets reflect the anticipated levy costs.*



## Superannuation Data Transformation Strategic Forum

5 June 2023  
Publication of notes

[LINK TO DETAILS](#)

APRA released notes from the **Superannuation Data Transformation Strategic Forum** (SDTSF) held on 16 May 2023. Key discussion points of the meeting include:

- APRA will continue informal industry engagement on proposals for Investments and RSE Licensee and RSE Profile collections until the of June 2023, including further workshops on **Valuations and Liquidity**;
- APRA will delay formal consultation on proposed reporting standards for investments and RSE Licensee and RSE profile until November 2023, and avoid consultation on reporting proposals over the peak year-end reporting period;
- Members requested more visibility on proposed changes to the project to enable better forward resource planning and cost management, particularly considering new superannuation-related announcements such as payday super;
- APRA confirmed their intent to provide worked examples for profit reporting as requested by industry.

APRA also confirmed their intention to communicate scheduled outages of APRA Connect with approximately one week's notice. A banner with relevant information will be displayed for unscheduled outages with APRA considering communication protocols during an unscheduled outage.

The next SDTSF will be held on Tuesday 8 August 2023 from 2:00-3:00pm.

*Superannuation trustees should note the discussion points.*



## ENFORCEMENT ACTIVITY



### ASIC Interim Stop Orders against Spaceship Super Funds

31 May 2023  
*Interim Stop Orders*

[LINK TO DETAILS](#)

ASIC issued **interim stop orders** on one superannuation product and three managed funds promoted by *Spaceship Capital Limited* (Spaceship Capital) due to deficiencies in their **target market determinations** (TMDs).

The relevant superannuation product, *Spaceship Super*, comprises the first interim stop order on a superannuation product issued by ASIC under the design and distribution obligations (DDO).

The three managed funds for which Spaceship Capital was the responsible entity are Spaceship Earth Portfolio, Spaceship Origin Portfolio and Spaceship Universe Portfolio (collectively 'Spaceship Voyager Funds').

The interim orders stop the superannuation trustee, *Diversa*, and *Spaceship Capital* from issuing interests in, giving a product disclosure statement (PDS) for, or providing financial product advice to retail clients recommending an investment in, Spaceship Super and the Funds.

Relevant to the *Spaceship Super*, ASIC asserts the **target market was defined too broadly** and **did not properly consider the risks** of the product options, specifically:

- the **target returns** for the investment options were **too low**, as investors in the target market were identified as seeking high returns;
- the **investment risk profile** of the investment options didn't align with the return profile identified for investors within the target market; and
- insufficient consideration of the investment risk features associated with the investment options, including **concentration, market and currency risks** arising from the way in which the products are invested.

Similarly for the Spaceship Voyager Funds, ASIC considered the target markets in the TMDs were defined too broadly and had not properly considered the risks and features of the three funds. ASIC also cited concerns with the distribution of the Spaceship Capital products.

Spaceship Capital has since proposed new TMDs that addressed ASIC's concerns for the three Spaceship Voyager Funds. Accordingly, on 16 June 2023, ASIC revoked the interim stop orders on the Spaceship Voyager Funds. The interim stop orders are still in place for Spaceship Super.



### OnePath Custodians

14 June 2023  
*Infringement Notice*

[LINK TO DETAILS](#)

APRA imposed a fine of almost \$1.5 million dollars on *OnePath Custodians Pty Limited* (OPC) for **failing to direct member contributions to a MySuper product**. APRA issued infringement notices for fines imposing a cumulative penalty of \$1,464,350 after becoming aware that OPC failed to direct 125 member contributions to a MySuper product from mid-2022 onwards.

OPC is one of four superannuation trustees owned by *Insignia Financial Ltd* (formerly IOOF Holdings Limited) and has approximately 700,000 members and \$35 billion in funds under management.

APRA stated they are continuing to monitor the remediation of the breach to ensure any members financially impacted received appropriate compensation as soon as possible.



## CASE LAW



### *Host Plus v Maritime Super* [2023] NSWSC 725.

28 June 2023  
Judgement

[LINK TO DETAILS](#)

The Supreme Court of New South Wales has issued its judgement in relation to the **proposed successor fund transfer** (SFT) being negotiated between Host-Plus Pty Ltd and Maritime Super Pty Limited.

The decision provides greater certainty in NSW on the operation of section 249E of the *Crimes Act 1900 (NSW)* in the context of negotiations between trustees of superannuation funds in relation to an SFT.

Section 249E(2) of the *Crimes Act* makes it an offence to offer or give a benefit to a person entrusted with property (such as a trustee), or to receive or solicit such a benefit as an **inducement or reward for the appointment** of a person to be entrusted with property, unless each beneficiary of the property or the Supreme Court consents.

The Supreme Court of NSW has previously provided such consent to a similar transaction, **creating uncertainty as to the operation of the criminal law** in the context of superannuation merger and SFT negotiations.

Stevenson J relied on the recent decision of Kelly J in *H.E.S.T. Australia Ltd v Attorney-General (Qld) & Anor; Mercy Super Pty Ltd v Attorney-General (Qld)*, deciding that the established usage of the term “**appointment**” in section 249E directs attention to conduct referable to designating a person in the office of trustee of a trust. This can be distinguished from the transfer of property and benefits from one trust to another trust, as is often the case in an SFT.

He reasoned that “it is no part of the Proposed Transfer that Host-Plus will be the trustee of the assets of the Maritime Fund. Host-Plus will remain trustee of the Hostplus Fund. The assets of the Maritime Fund are to be transferred to the Hostplus Fund. Once the transfer takes effect, those assets will cease to be impressed with the trusts governing the Maritime Fund, and will become impressed with the trusts governing the Hostplus Fund.”

His honour differentiated the facts from those in *Application of MLC Investments Limited*, which did not concern a SFT but, rather, the retirement of one trustee of a management investment scheme and the **appointment of a new trustee** in that role.

*This decision extends to NSW clarity as to the application of similar criminal offences to trustees of superannuation funds when negotiating or dealings in relation to a proposed SFT.*

*Close attention is, however, required in relation to associated aspects of a merger transaction which could result in the appointment of a new trustee to an existing trust. Such circumstances may occur if the two funds are retained under the one trustee post-merger, or the transferring trustee is appointed as trustee of the successor fund.*





## ABOUT QMV LEGAL

QMV Legal is committed to assisting superannuation trustees and their members achieve the best retirement outcomes through good governance, timely regulatory compliance, and pragmatic legal advice.

Being closer to the business operations and technology of running a superannuation fund provides QMV Legal with a unique insight into the legal issues faced by superannuation funds.

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## CONTACT US

If you have any questions or need assistance, you can contact us directly via the details below:



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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.