

### IN THE PAST MONTH:

- ALRC FINAL REPORT
- CYBER SECURITY CONSULTATION
- CLIMATE-RELATED FINANCIAL DISCLOSURE
- SPS 310 AMENDMENTS
- FINANCIAL ADVISOR EXAM CHANGES



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### IN BRIEF

After a busy December, it was a quiet month in January with Parliament still on summer recess meaning no new legislation was introduced nor progressed.

However, the long-awaited Final Report from the Australian Law Reform Commission was published, including 58 recommendations for reducing complexity with financial services legislation.

Additionally, Treasury moved us one step closer to mandating climate-related financial disclosures with an Exposure Draft into the regime released.

Finally, the Department of Home Affairs released a consultation into cyber-security regulation with the intention to strengthen the underlying legislation surrounding business practices.

## COMMONWEALTH PARLIAMENT



### Superannuation Bills

January 2024  
Parliamentary Business

[LINK TO DETAILS](#)

#### Status key

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

There were no sitting days for Commonwealth Parliament in January due to summer recess. The following superannuation-related Bills are before the House of Representatives:

- [Treasury Laws Amendment \(Better Targeted Superannuation Concessions and Other Measures\) Bill 2023](#)
- [Superannuation \(Better Targeted Superannuation Concessions\) Imposition Bill 2023](#)
- [Housing Australia Future Fund Bill 2023 \[No. 2\]](#)
- [Superannuation \(Objective\) Bill 2023](#)

The following Bills remain before the Senate, and are listed for debate on Thursday, 8 February:

- [Treasury Laws Amendment \(Support for Small Business and Charities and Other Measures\) Bill 2023](#)
- [Treasury Laws Amendment \(Consumer Data Right\) Bill 2022](#)

Parliament resumes for the Autumn session on 6 February 2024.



## MAJOR UPDATES



### Review of the Legislative Framework

18 January 2024  
*Final Report*

[LINK TO DETAILS](#)

The Australian Law Reform Commission's (ALRC) Final Report, *Confronting Complexity: Reforming Corporations and Financial Services Legislation* was tabled in Parliament by the Attorney-General.

The ALRC was tasked with **inquiring into the simplification of the legislative framework for corporations and financial services regulation** and published a series of interim reports over the last 3 years. The issues identified were most evident in Chapter 7 of the *Corporations Act 2001*.

The Final Report, finalised in November 2023, **contains 58 recommendations aimed at transforming the legislation into a more adaptive, efficient and navigable legislative framework**. Several recommendations have already been implemented in full or in part as they were referenced in an Interim Report.

Recommendations in the Final Report include:

- **Redesigning financial services legislation to give it a clear home and identity as the 'Financial Services Law';**
- **Ending the use of notional amendments, and instead using thematic, consolidated rulebooks** to provide flexibility for regulating particular products, persons, services, or circumstances; and
- **Amend the definitions of 'financial product' and 'financial service'** by introducing a single, simplified definition of both terms.

The Government is currently considering the Final Report and recommendations. No timeframe for a response has been announced.

*While this may be enthralling to lawyers, trustees should simply remain aware of the prospect of changes in line with the recommendations.*



### Cyber-Security Strategy and Legislative Reforms

19 December 2023  
*Consultation*

[LINK TO DETAILS](#)

The Department of Home Affairs published the [2023-2030 Australian Cyber Security Strategy: Cyber Security Legislative Reforms Consultation Paper](#) which sets out the Government's proposals to strengthen Australian cyber-security laws. The Consultation Paper outlines areas of proposed legislative reform comprising several proposals within each, including:

- **New legislative initiatives to address gaps in current laws**, including mandating a security standard for consumer-grade smart devices; creating a no-fault, no liability ransomware reporting obligation; and establishing a Cyber Incident Review Board; and
- **Amendments to the *Security of Critical Infrastructure Act 2018* (SOCI Act)** to clarify the obligation to protect data storage systems of 'business critical data'; and introduce a power for the Secretary of Home Affairs to direct an entity to address risk program deficiencies.

The Consultation supports the recent release of the [2023-2030 Australian Cyber Security Strategy](#) which sets out the Government's ambitions to become a world-leader in cyber-security by 2030. The accompanying [2023-2030 Australian Cyber Security Action Plan](#) further detailed several legislative reforms that are now subject to consultation.

A series of town hall meetings and sector-specific meetings will be held to garner additional feedback from interested stakeholders. Feedback to the Consultation Paper is sought by 1 March 2024.

*Superannuation trustees should note the consultation and may wish to involve information security resources in the sector-specific meetings.*



## Mandatory Climate-Related Financial Disclosures

12 January 2024  
*Exposure Draft*

[LINK TO DETAILS](#)

Treasury released [Treasury Laws Amendment Bill 2024: Climate-related financial disclosure - Exposure draft](#) and supporting documentation for consultation. The draft legislation seeks to require reporting entities to **prepare a Sustainability Report to accompany the existing annual financial reporting obligations** within Chapter 2M of the *Corporations Act 2001*. The Sustainability Report would form part of the Annual Report and comprise a **Climate Statement, Notes to the Climate Statement and a Director's declaration** about the Climate Statement and Notes.

The Climate Statement must include:

- **Material climate risks and opportunities** faced by the entity within the financial year;
- **Metrics and targets relating to climate** required to be disclosed by the sustainability standards, including those relating to **scope 1, 2 and 3 emissions of greenhouse gas**;
- **Governance policies, processes and controls** of the entity required to be disclosed under the sustainability standards relating to climate and scope 1, 2 and 3 emissions; and
- **Quantity of scope 3 emissions for the period** (although scope 3 does not need to be disclosed for the first financial year being reported by the entity).

The Exposure Draft also sets out the **auditing and assurance requirements** for the Sustainability Report, requiring an independent auditor to issue a report stating their opinion on whether the Sustainability Report complies with the sustainability standards and climate disclosure obligations.

**Commencement of the regime would be phased in** based (primarily) on the entity size, with three Groups identified. Each Group must prepare an annual Sustainability Report for the financial year that commences between:

- Group 1 - from 1 July 2024 and 30 June 2025;
- Group 2 - from 1 July 2026 and 30 June 2027; and
- Group 3 - from 1 July 2027.

Feedback to the consultation is requested by 9 February 2023.

*Superannuation trustees should carefully review the Exposure Draft and consider the commencement date that would apply to any reporting requirements and data dependencies and audit arrangements.*



## 2024 Focus - ATO

31 January 2024  
*Announcement*

[LINK TO DETAILS](#)

The ATO announced a series of key focus areas for 2024 in relation to superannuation:

- Strengthen activities against **illegal early access**;
- Release comprehensive support materials to further inform and assist **fund reporting obligations relating to Successor Fund Transfers**;
- Enhance and strengthen controls to **detect and prevent fraud** and individual data compromise through cyber threat;
- Further industry consultation on the [Payday Super](#) reforms; and
- Raising profile of **data governance** of member data.

*Superannuation trustees should note the ATO's announcement and ensure internal priorities reflect these activities.*



## POLICY AND REGULATION



### APRA Audit Prudential Standard Amendments

17 January 2024  
Consultation

[LINK TO DETAILS](#)

APRA issued a letter to all RSE licensees setting out a range of proposed amendments to several Prudential Standards. The amendments are minor and consequential and follow the financial reporting and auditing changes as set out in [Treasury Laws Amendment \(2022 Measures No. 4\) Act 2023](#) which requires Registrable Superannuation Entities (RSEs) to submit financial reports to ASIC under Chapter 2M of the *Corporations Act 2001*.

Key changes to the amendments proposed are as below:

- **Prudential Standard SPS 310 Audit and Related Matters (SPS 310)**: carve out financial reporting from audit scope, remove the 'approved form' for audit, and increase document retention from 5 to 7 years;
- **Prudential Standard SPS 510 Governance (SPS 510)**: from 1 July 2028, remove the requirement for an individual who plays a significant role in the audit of an RSE for 5 years to not continue with that role for a period of two years;
- **Prudential Standard SPS 520 Fit and Proper (SPS 520)**: clarify an individual RSE auditor or lead auditor is a responsible person and the fit and proper requirements apply; and
- **Prudential Practice Guide SPG Fit and Proper (SPG 520)**: minor additions to clarify who a responsible person is in relation to an RSE auditor and the relevant obligations that apply.

APRA is also proposing to retire **Prudential Practice Guide SPG 310 Audit and Related Matters** (SPG 310) as the minor and consequential amendments remove the substantive content of this guidance.

Feedback on APRA's proposals is due by 28 February 2024.

*Superannuation trustees should note the proposed changes and ensure internal finance and governance teams are made aware.*



### Statutory Declarations Regulations

22 December 2023  
Legislative Instrument

[LINK TO DETAILS](#)

The Government registered *Statutory Declarations Regulations 2023* which repeal and replace the *Statutory Declarations Regulations 2018*. The new Regulations support amendments made to the *Statutory Declarations Act 1959 (Cth)* ('Act') which took effect 1 January 2024 and **enable Commonwealth Statutory Declarations to be made electronically**. The Regulations:

- **detail the occupations and other persons who can witness a Statutory Declaration** (a 'prescribed person'), which documents may be used to verify an individual's identity, and information to be included within a valid Statutory Declaration;
- **prescribe Mygov as an 'approved online platform' and an 'approved identity service'** in accordance with section 9A of the Act; and
- **prescribe that, for the purposes of a report prepared by an online platform in accordance with subsection 9B(2) of the Act, information about the number of Statutory Declarations started but not completed using the online platform be included.**

Separately, AUSTRAC issued an [amendment](#) to the AML/CTF Rules to reflect the new Regulations.

*Superannuation trustees should note the new Regulations and ensure relevant policies and procedures are updated if required.*



## TECHNICAL UPDATES



### Accounting Standard AASB Re-issue

17 January 2024  
*Legislative Instrument*

[LINK TO DETAILS](#)

The Australian Accounting Standards Board (AASB) reissued *AASB 1056 Superannuation Entities* ('AASB 1056') as a legislative instrument under section 334 of the *Corporations Act 2001*. AASB 1056 sets out the requirements for the presentation and calculation methodology of financial statements for superannuation entities.

Originally issued in 2014, AASB 1056 was created as an Accounting Standard, however recent amendments requiring superannuation entities to prepare and lodge annual financial statements with ASIC **required AASB 1056 to be converted to a legislative instrument** to take precedence over other Standards as necessary.

**No changes to the substance of AASB 1056 were made**, however some outdated requirements were removed.

*Superannuation trustees should ensure finance teams are aware of the Instrument, although limited direct impact is envisaged.*



### Financial Advisor Exam Changes

14 December 2023  
*Consultation*

[LINK TO DETAILS](#)

Treasury released *Corporations (Relevant Providers—Education and Training Standards) Amendment (2024 Measures No. 1) Determination 2024* (amending Determination) which **amends the existing financial advisor exam requirements**.

The amending Determination makes two changes to the exam principles as approved by the Minister in *Corporations (Relevant Providers—Education and Training Standards) Determination 2021* to:

- amend the exam format to be **multiple-choice only**; and
- remove the requirement that an **individual must have already met the qualifications standard before sitting the exam**.

This follows a [brief consultation](#) on the amendments in December 2023.

*Superannuation trustees should note the change and ensure internal policies and procedures reflect the amended requirements.*



### Financial Advisor Registration Delay

23 January 2024  
*Legislative Instrument*

[LINK TO DETAILS](#)

ASIC has further delayed the registration cut-off date for relevant providers to be registered with ASIC as a pre-condition for providing personal financial advice.

*ASIC Corporations (Amendment) Instrument 2024/23* ('Amending Instrument') delays, for the fourth time, the registration requirement to allow extra time for "amendments to be made that will improve the operation of the stage one registration process". Originally scheduled to commence 1 January 2023, the Amending Instrument delays commencement to 16 February 2024.

This means relevant providers and AFS licensees can continue providing financial advice until 16 February 2024 without being registered with ASIC.

*Superannuation trustees should note the extension.*



## Miscellaneous Minor Amendments

30 January 2024  
*Exposure Draft*

[LINK TO DETAILS](#)

Treasury released Exposure Draft legislation and supporting explanatory materials which contain minor technical amendments to various Treasury portfolio legislation, some of which relate to superannuation. [Treasury Laws Amendment Bill 2024: Miscellaneous and technical amendments – Autumn 2024](#) and [Treasury Laws Amendment Instrument 2024: Miscellaneous and Technical Amendments – Autumn 2024](#) would:

- insert the term ‘auditor’ against several provisions within Division 1 of the Corporations Act;
- clarify provisions 68AAB and 68AAC of the SIS Act to ensure all members of regulated superannuation funds can automatically maintain their insurance following a successor fund transfer even if the age and balance requirements are not met;
- relocate certain requirements from the SIS Regulations to the SIS Act to provide clarity in relation to actuarial and audit obligations; and
- remove references to ‘annual report’ and replace with ‘fund information’ when notifying a regulator of significant adverse events.

Feedback is sought by 12 February 2024.

*Superannuation trustees should note the Exposure Draft.*



## Financial Advisor Qualifications

30 January 2024  
*Exposure Draft*

[LINK TO DETAILS](#)

Treasury released [Corporations \(Relevant Providers—Education and Training Standards\) Amendment \(2024 Measures No. 1\) Determination 2024](#) (‘2024 Determination’) for consultation which seeks to provide greater flexibility for financial advisers to demonstrate that they have met the conditions of an approved degree.

The 2024 Determination inserts new subsection (2A) in section 6 of the *Corporations (Relevant Providers Degrees, Qualifications and Courses Standard) Determination 2021* (‘Approved Qualifications Determination’) to provide that a person may satisfy the conditions for an approved degree/qualification in the following ways:

- via academic transcript(s) issued by the provider of the approved degree/qualification, which demonstrates that the person has met each of the approved conditions; and/or
- via statement(s) issued by the provider of the approved degree/qualification, confirming that the person has met each of the approved conditions.

Feedback is sought by 27 February 2024.

*Superannuation trustees should note consultation and ensure internal policies and processes align with the proposed changes.*





## AFCA Decision-Making Amendment

31 January 2024  
*Legislative Instrument*

[LINK TO DETAILS](#)

The Government made *AFCA Scheme Amendment (2024 Measures No. 1) Authorisation 2024* ('Amendment') to provide for a set of circumstances in which AFCA must not make a decision in relation to a complaint.

The Amendment inserts new section 9A into the [AFCA Scheme Authorisation 2018](#) and prescribes the following circumstances:

- where, if a decision were to be made, the decision would be in the complainant's favour, would require the subject of the complaint who is a member of the scheme to pay an amount to a person, and AFCA reasonably believes, having regard to the member's financial position, the full amount would unlikely be paid; and
- the complaint relates in whole or part to providing financial product advice that is personal advice provided to a retail client in relation to a relevant financial product, or relates to engaging in a credit activity or dealing in securities for a retail client; and
- at the time of engaging in the above-mentioned activities, the member was not authorized to do so; and
- AFCA do not reasonably believe exceptional circumstances apply that would otherwise require a decision to be made.

Where AFCA determine a complaint to meet the stated criteria, no further action in relation to the complaint is required of AFCA.

*Superannuation trustees should note the new exemption, particularly in the provision of personal advice in relation to a superannuation product.*



## APRA Policy and Supervision Priorities

31 January 2024  
*Announcement*

[LINK TO DETAILS](#)

APRA published its supervision and policy priorities for the first half of 2024. Specific to superannuation, APRA confirmed it will undertake the following activities:

- review RSE licensee self-assessments against ***SPS 530 Investment Governance***; conduct a deep-dive on valuation and liquidity practices;
- finalise ***SPS 515 Strategic Planning and Member Outcomes*** and associated guidance in first half of 2024 to promote superannuation transparency and set expectations in relation to the retirement income covenant; and
- consult on revisions to ***SPS 114 Operations Risk Financial Requirement*** and associated guidance in 2024.

More broadly, but still relevant to superannuation, APRA will:

- Maintain heightened supervisory focus on **cyber resilience** and ensure entity compliance with ***CPS 234 Information Security***;
- Undertake further engagement with entities, including hosting roundtables, in relation to ***CPS 230 Operational Risk Management***;
- Jointly with ASIC, release an **information package in early 2024 regarding the Financial Accountability Regime** and host a series of webinars to support entities prepare for March 2025 commencement;
- Review effectiveness of ***CPG 229 Climate Change Financial Risks*** and will ask entities for voluntary participation in the next Climate Risk Self-Assessment surveys; and
- Engage with superannuation licensees to drive an uplift in approach to ***CPS 190 Recovery and Exit Planning***.

*Superannuation trustees should note APRA's stated intentions and forthcoming activities and ensure they are appropriately prepared.*



## APRA Superannuation Data Transformation

5 February 2024  
FAQs

[LINK TO DETAILS](#)

APRA released four new Frequently Asked Questions (FAQs) in relation to the Superannuation Data Transformation (SDT) project:

- **SRS 251.2 f:** APRA expects RSE licensees to report re-opened claims in SRS 251.0 table 4 column 5, and report the duration of reopened claims when calculating the Average Claim Duration Number;
- **SRS 332.0 w:** APRA expects RSE licensees to report payroll tax on SRS 332.0 as part of the wage or remuneration expense associated with the relevant 'Expense group type', 'Expense type', 'Service arrangement inclusions exclusions text' and 'Service arrangement engagement type';
- **SRS 332.0 x:** APRA expects executive and director remuneration to be reported consistently with disclosed remuneration reported within RSE licensee financial statements, and clarified director remuneration paid to an industrial body versus an individual; and
- **SRS 606.0 b:** APRA intends to update reporting instructions for SRF 606.1 to clarify how a combination of a fees and costs arrangement with an investment pathway with members or assets should be reported.

APRA also amended worked examples ABC Superannuation and XYZ Superannuation to align with changes resulting from APRA's response to consultation on Minor Amendments to reporting standards on 3 March 2023.

*Superannuation trustees should ensure project teams working the SDT implementation are made aware of the new FAQs and examples.*



## Family Law End Benefit Exemption

2 February 2024  
Legislative Instrument

[LINK TO DETAILS](#)

Treasury released a finalised *Taxation Administration (Meaning of End Benefit) Instrument 2024* following a brief consultation period held in December 2023.

This instrument specifies that a family law superannuation payment is not an end benefit under section 133-130 in Schedule 1 to the *Taxation Administration Act 1953* and therefore do not trigger an individual's liability to pay Division 293 tax that has been deferred to a debt account.

The Instrument was due to sunset on 1 April 2024.

*Superannuation trustees and administrators of defined benefit funds should note the finalised instrument and ensure policies and procedures relating to family law administration reflect these rules.*





## CASE LAW



## Muffet v Qantas Superannuation Limited

1 February 2024  
Judgment

[LINK TO DETAILS](#)

The Federal Court dismissed an appeal brought against an Australian Financial Complaints Authority (AFCA) determination from a member of Qantas Superannuation Limited (QSL) in relation to the calculation of his defined benefit.

The member ceased employment as a pilot with Qantas Airways Limited (Qantas) and became entitled to claim a defined benefit from QSL, calculated in part by reference to his Final Average Salary ('FAS'). The QSL Trust Deed defined FAS, as relevant to the member, to be the "average annual Superannuation Salary calculated over the most recent period of three (3) years". Superannuation Salary was further defined as "... base pay equivalent to 170 hours per 56 days" plus allowances.

The reference to '56 days' was found within the relevant Enterprise Agreement with Qantas in place at the time and represents the payment structure of four fortnightly pay periods. As noted by the Court, Superannuation Salary is based on a particular pay structure and not a specific annual amount.

The QSL Trust Deed did not prescribe a method for converting the Superannuation Salary to an annualised amount for the purposes of calculating FAS, so QSL calculated the annual Superannuation Salary as 26 times the fortnightly salary on the basis there are 26 fortnights in the year. This aligned with QSL's business rules and was applied to all members whose salaries were provided by Qantas to QSL on a fortnightly basis.

The basis for the member's complaint to AFCA was this calculation financially disadvantaged him as 26 fortnights represent only 364 days ( $26 \times 14 = 364$ ) in a given calendar year or financial year. The member was seeking a recalculation of annual Superannuation Salary using a daily amount derived from salary which would yield a marginally higher FAS.

AFCA determined QSL's method of calculating the member's FAS and the decision not to recalculate was fair and reasonable in all the circumstances. AFCA noted that, in the absence of a prescribed method for annualising Superannuation Salary in the Trust Deed, it therefore falls to QSL, as trustee, to adopt a method that is fair and reasonable.

In reaching a decision, Yates J agreed with AFCA's determination and found there to be various methods for annualising Superannuation Salary and, given the Trust Deed's silence on the method to be used, this is a "matter that falls within the trustee's decisional freedom".

Further, in relation to AFCA's decision making, Yates J stated:

*"... fairness and reasonableness in all the circumstances do not entail a decision that is the optimum or most advantageous or most beneficial decision for the person whose interests are affected by the decision. To hold otherwise would be to distort the ordinary meaning of "fair" and "reasonable"."*

The appeal was dismissed.



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## CONTACT US

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