

QMV

LEGAL & REGULATORY UPDATE

PENSIONS AND SUPERANNUATION

INSIDE THIS EDITION

- Putting Members' Interests First
- Design and Distribution
- Retirement System Review
- SG Amnesty
- Insurance Thematic Review

[SUBSCRIBE](#)


Jonathan Steffanoni
Principal Consultant
Legal & Risk

IN BRIEF

The Putting Members' Interests First Bill was passed with several amendments, including more realistic (yet tight) timeframes for implementation.

The expected announcement of the Retirement Incomes Review, and release of the terms of reference has also signalled the continued focus on regulatory change affecting the superannuation industry.

September also saw release of the draft Product Design and Distribution regulations, Superannuation (Unclaimed Money and Lost Members) Regulations 2019 and draft legislation implementing ASIC's Enforcement Review Taskforce Report recommendations for consultation.

MAJOR REFORM UPDATES



Putting Members' Interests First

19 September 2019
Legislation

[LINK TO DETAILS](#)

Treasury Laws Amendment (Putting Members' Interests First) Bill 2019, which prevents trustees from providing insurance on an opt out basis to members under 25 and members who have low-balance accounts, passed both Houses of Parliament, with the following amendments:

- A delayed effective date of 1 April 2020, with the requirement that trustees identify members who may be affected by the measure on 1 November 2019 and notify these members by 1 December 2019.
- Permission for trustees to provide opt out insurance to new members under 25 and members with balances below \$6,000 where the member is engaged in a dangerous occupation.

In addition to member notification requirements, if a member is to be covered by the dangerous occupation exception, the trustee must notify APRA of its election and a Fellow of the Institute of Actuaries of Australia must certify that the occupation is in the riskiest quintile of occupations in Australia (based on rates of death, or death and total permanent disability), or the member is employer as an emergency services worker.

QMV recommends that superannuation trustees ensure that adequate administration arrangements are in place to facilitate compliance with the requirements and planning for the identification and communication with affected members. Trustees should also consider the impact of the changes on insurance premiums.



Retirement System Review

27 September 2019
Review

[LINK TO DETAILS](#)

In accordance with the Productivity Commission's recommendation in its report *Superannuation: Assessing Efficiency and Competitiveness*, Treasury has commissioned an independent review of the retirement income system.

The terms of reference will see the review making findings, but not making policy recommendations. The terms of reference include considering:

- How the retirement income system supports Australians in retirement;
- The role of each of the three pillars (a means-tested Age Pension; compulsory superannuation; and voluntary savings, including home ownership) in supporting Australians through retirement;
- Distributional impacts across the population and over time; and
- The impact of current policy settings on public finances.

A consultation paper will be released in November 2019 and the final report provided to the government by June 2020.

QMV recommends that superannuation trustees allocate some bandwidth for participating in the consultation directly or via representative associations once the consultation paper is released.



Design & Distribution Obligations

12 September 2019
Consultation

[LINK TO DETAILS](#)

The Government has released for public consultation exposure draft regulations to support the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019*. The purpose of the Regulations is to enhance the Design and Distribution Obligations regime by altering the products and persons to which the regime applies.

The Regulations exclude interests in eligible rollover funds and defined benefit superannuation interests, while extending the regime to interests in IDPSs that are not already subject to the regime, ADI debentures and basic banking products, among others. The Regulations also extend the regime to additional persons in situations where the regime could be avoided by such persons.

QMV recommends that superannuation trustees review the draft regulations and explanatory statement to determine whether to submit a response to the Government's consultation, which closes 11 October 2019.



SG Amnesty

18 September 2019
Legislation

[LINK TO DETAILS](#)

The Government has introduced *Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019* to Parliament, providing an amnesty to encourage employers to correct SG non-compliance.

Generally, failure to pay a minimum SG can result in liability to pay to the ATO the SG charge (composed of the individual SG shortfalls, nominal interest and a \$20 per employee per quarter administration component); penalties which can be up to 200% of the amount of underlying SG charge; and general interest when penalties are not paid on time.

Under the amnesty, employers will be allowed to claim tax deductions for payments of the SG charge or contributions made during the amnesty period to offset SG charge, as well as a reduction of penalties and fees that may otherwise apply in relation to historical SG non-compliance. Employers must take specific actions within a prescribed period to qualify for the amnesty.

QMV recommends that superannuation trustees consider engaging with their employer sponsors to ensure that they are aware of the amnesty.

TECHNICAL CHANGES AND UPDATES



Departed Temporary Residents

18 September 2019
Legislative Instrument

[LINK TO DETAILS](#)

Class Order [CO 09/437] *Departed former temporary residents' superannuation – Disclosure relief* expired on 1 October 2019. In anticipation of the expiry, ASIC has issued a new instrument, *ASIC Corporations Unclaimed Superannuation – Former Temporary Residents Instrument 2019/873*, which continues relief to superannuation trustees from the requirement to notify and give exit statements to departed former temporary residents when their benefits are paid to the ATO under Part 3A of the *Superannuation (Unclaimed Moneys and Lost Members) Act 1999*. The relief is conditional on:

- Inclusion of specified information for temporary residents in product disclosures and on the fund's website (rather than on the trustee's website as previously required); and
- Provision of reasonable assistance if a former temporary resident asks a trustee about their interest in the fund.

QMV recommends that superannuation trustees review the Class Order and revise disclosure materials as necessary and where applicable ensure that specified information is included on the fund's website rather than on the trustee's website.



Unclaimed Money and Lost Members

30 September 2019
Consultation

[LINK TO DETAILS](#)

The Government has released draft *Superannuation (Unclaimed Money and Lost Members) Regulations 2019* as the existing *Superannuation (Unclaimed Money and Lost Members) Regulations 1999* are scheduled to sunset on 1 April 2020. As with the current regulations, the draft regulations support the operation of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* by establishing a scheme under which superannuation providers are required to give statements about funds belonging to lost members to the ATO.

The draft regulations include two substantive changes from the previous regulations:

- Prescribing conditions of release whereby an account will no longer be considered an inactive low-balance account, and therefore not payable to the Commissioner, if the member has met one of those conditions; and
- Interest to apply to the payment of unclaimed amounts in relation to inactive low-balance accounts.

Other changes included in the draft regulations repeal redundant provisions, simplify language and restructure provisions for ease of navigation, but do not affect the substantive meaning or operation of provisions.

QMV recommends that superannuation trustees review the draft regulations and explanatory statement and consider submitting a response by the consultation end date of 25 October 2019.



Concessional Taxation and interest on ATO-held super

18 September 2019
Legislation

[LINK TO DETAILS](#)

The *Treasury Laws Amendment (2019 Measures No 2) Bill 2019* was introduced into Parliament. The Bill includes:

- Schedule 1 amending tax law to extend the concessional taxation for genuine redundancy and early retirement scheme payments to amounts paid to individuals who are 65 or more years of age provided the dismissal or retirement occurs before they reach pension age;
- Schedule 5 amending the *Superannuation (Unclaimed Money and Lost Members) Act 1999* to allow for regulations to be made to prescribe a rate of interest payable on amounts held by the ATO which are proactively reunified into a persons super account, and the *Superannuation (Unclaimed Money and Lost Members) Regulations* to prescribe a rate of interest payable on inactive low-balance accounts and amounts proactively reunified.

QMV recommends that superannuation trustees review the Bill to ensure that arrangements are in place internally and with service providers to comply with the changes.



Consumer Data Right

18 September 2019
Legislation

[LINK TO DETAILS](#)

The *Treasury Laws Amendment (2019 Measures No 2) Bill 2019* also seeks to amend the *Competition and Consumer Act 2010* to create a requirement that consumer data rules include an obligation on accredited data recipients to delete CDR data in response to a request from a CDR consumer for that CDR data.

The change aligns Australia's CDR data protection regime more closely with the European General Data Protection Regulation (GDPR).

QMV recommends that superannuation trustees intending register as an authorised data recipient for Open Banking ensure that systems and processes are in place to enable to deletion of CDR data upon request. Consideration should also be given to any record keeping obligations which may complicate compliance.



Contribution Caps, LRBAs & NALI

19 September 2019
Legislative Instrument

[LINK TO DETAILS](#)

The *Treasury Laws Amendment (2018 Superannuation Measures No 1) Bill 2019* passed both houses of Parliament with no amendments. The bill amends the:

- *Superannuation Guarantee (Administration) Act 1992* to allow certain employees with multiple employers to apply for an employer shortfall exception to avoid unintentionally breaching their concessional contributions cap;
- *Income Tax Assessment Act 1997* to ensure that a superannuation entity's non-arm's length income includes income where expenditure in gaining or producing it was not an arm's length expense; and
- *Income Tax Assessment Act 1997*, *Taxation Administration Act 1953* and *Income Tax (Transitional Provisions) Act 1997* to amend the total superannuation balance rules to ensure that, in certain circumstances involving limited recourse borrowing arrangements, the total value of a superannuation fund's assets is taken into account in working out individual members' total superannuation balances.

While most aspects are more likely to affect only SMSFs, QMV recommends that all superannuation trustees review the total superannuation balance test aspects of the Bill and the Explanatory Memorandum.



OTC Derivative Risk Management

19 September 2019
Prudential Standard

[LINK TO DETAILS](#)

After consultation on revisions to *Prudential Standard CPS 226 Margining and risk mitigation for non-centrally cleared derivatives*, APRA released a response to submissions and a final revised CPS 226. After support from all respondents (of eight submissions), APRA is proceeding with its proposal to amend CPS 226, including amendments to:

- Initial margin requirements: including delaying the final implementation phase, deferring application to some APRA covered entities and clarifying that an APRA covered entity is not required to have initial margin documentation, custodial arrangements and operational processes in place for posting and collecting initial margin in cases where the bilateral initial margin amount for a particular trading relationship is less than AUD 75 million ;
- Genuine amendments to existing derivatives transaction: to specify that amending contracts for existing derivative transactions solely for the purpose of addressing interest rate benchmark reforms is a genuine amendment that does not qualify as a new derivative transaction;
- Substituted compliance: APRA confirmed it will add the UK's Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) to the list of foreign bodies eligible for substituted compliance with APRA's margin requirements in CPS 226, provided that the PRA and FCA's margin requirements remain substantially unchanged following Brexit.

The changes may affect superannuation trustees, which utilise OTC derivatives to manage investment related risks. QMV recommends that superannuation trustees review the revised CPS 226 and consider APRA's expectation to monitor exposure and ensure that documentation, custodial arrangements and operational processes are in place sufficiently in advance of exceeding the threshold.



Foreign Funds Management

4 September 2019
Legislative instrument

[LINK TO DETAILS](#)

ASIC has extended licensing relief for foreign financial service providers (FFSPs) until 31 March 2020. This will allow FFSPs to provide certain financial services to Australian wholesale clients without needing to hold an AFS licence. The relief includes:

- FFSPs can provide specified financial services to Australian wholesale clients if their home regulatory regime has been assessed by ASIC as sufficiently equivalent to the Australian financial services licensing regime; and
- FFSPs that are only required to hold a licence because they have engaged in conduct that is intended to induce an Australian wholesale client to use the provider's financial services.

QMV recommends that superannuation trustees with in-house investment management operations review ASIC existing investment arrangements in line with the extension.

GUIDANCE AND POLICY



Insurance Recovery Planning

18 September 2019
Guidance

[LINK TO DETAILS](#)

APRA has issued a letter to Life & General Insurers outlining its observations from its recent recovery planning thematic review with a group of in-scope large and medium-sized general insurers and life insurers.

APRA will use the outcomes of the thematic review to inform its development of a prudential framework for recovery and resolution, on which it plans to consult next year.

According to APRA, a recovery plan comprises a menu of options designed by a financial institution to enable it to survive a financial shock and restore itself to a sound financial condition without the need to seek public sector support. APRA will continue to focus on building recovery and resolution capability over the coming years.

APRA's key observations include the need for the following:

- Better integration of recovery plan with risk management framework;
- Clearer processes for monitoring and escalating emerging issues;
- Frameworks for operational testing of recovery plan;
- Reliance on a broader range of metrics (both quantitative and qualitative) to identify emerging risks across a variety of areas and staggered trigger points;
- More comprehensive menus of recovery options, including those that may have permanent or strategic implications for the insurer;
- Supporting analysis/playbooks for recovery options; and
- Consideration of non-financial risk scenarios.

QMV recommends that superannuation trustees review APRA's observations and keep apprised of their associated insurer's recovery plans. Additionally, given APRA's focus on recovery planning, trustees should review their own recovery plans for insured benefit related risks and consider whether they remain appropriate.



First Home Super Saver Reminder

11 September 2019
Guidance

[LINK TO DETAILS](#)

The ATO has been reviewing fund performance regarding timely actioning of First Home Super Saver ('FHSS') release authorities and has found a large number of funds are not meeting their obligations to action release authorities within the required timeframe.

As a result, the ATO has reminded funds of the legal obligation to action all FHSS release authorities issued by the ATO within 10 business days of the date of issue, as the Commissioner has not extended the time to action them. When money is available, the funds must action the release authority and cannot return a nil release authority statement.

The ATO will shortly contact funds that have a high proportion of late FHSS release authorities and conduct follow-up checks in three months to assess improvement.

QMV recommends superannuation trustees review operational processes around FHSS release authorities and ensure that current processes allow them to comply with the legislated 10-day requirement.



APRA Transparency and Data Reporting

3 September 2019
Enforcement Approach

[LINK TO DETAILS](#)

APRA has updated its Enforcement Approach, which was published in April, to outline how it will increase transparency around its enforcement power use and take stronger action against institutions that fail to meet their legal obligations to report data to APRA in full and on time.

Unless there are likely to be risks to beneficiaries' interests and/or financial stability from publicising an action, APRA will typically make public: administrative enforcement actions taken by it; acceptance of an enforceable undertaking; disqualifications of accountable persons under BEAR or other responsible persons under the prudential framework; and court-based enforcement actions.

APRA will also use enforcement actions where appropriate to ensure that its data remains fit for purpose for its users. The value of an entity's data to APRA is impacted by timeliness, quality and proportionality of the entity's data to the collection. In instances where data breaches or issues are indicative of prudential risk at a regulated entity, APRA will also consider the need to take enforcement action to address the prudential risks.

QMV recommends that superannuation trustees review APRA's update and consider whether they have appropriate processes and procedures in place to comply with data reporting requirements.



ASIC Royal Commission Implementation

11 September 2019
Announcement

[LINK TO DETAILS](#)

ASIC has issued a second update, following its initial update published on 19 February 2019, on its actions in response to the Royal Commission. The seven priorities identified in ASIC's Corporate Plan (2019-23) for this year are aligned with addressing the Royal Commission recommendations and taking action in the areas highlighted by the Royal Commission.

ASIC provided updates on:

- Enforcement: As at 31 July 2019, 88 enforcement investigations and 17 court actions were underway, including the 13 Royal Commission referrals and 29 investigations resulting from Royal Commission case studies.
- Strategic Change: Advancement of the Close and Continuous Monitoring Program (early areas of focus include breach reporting and complaints handling) and the Corporate Governance Taskforce (tasked with completing a targeted, thematic assessment of the corporate governance practices of 21 of the ASX100 companies).
- Response to Royal Commission Recommendations: ASIC continues to support the Government legislative reform agenda, as well as starting to take on the role of conduct regulator for superannuation with close monitoring of trustees' implementation of Protecting Your Super reforms.

QMV recommends that superannuation trustees remain aware of the regulator's plans to implement Royal Commission recommendations and ensure readiness to comply with upcoming changes to the regulatory framework.



ASIC Enforcement Review Taskforce

11 September 2019
Consultation

[LINK TO DETAILS](#)

The Government released draft legislation which implements the recommendations from ASIC's Enforcement Review Taskforce Report. The draft legislation:

- Strengthens ASIC's licensing powers by replacing the AFS License requirement that a person be of 'good fame and character' with an on-going requirement that they be a 'fit and proper person'.
- Aligns the penalties for false and misleading statements in AFS and Australian Credit License applications.
- Extends ASIC's powers so that they may ban a person from performing functions in a financial services or credit business. The legislation also expands the grounds on which ASIC can issue banning orders.
- Harmonises ASIC's Search Warrant powers across different Acts and brings them into line with the search warrant powers in the Crimes Act.
- Allows interception agencies to provide lawfully intercepted information to ASIC for serious offences that ASIC can investigate or prosecute.

QMV recommends superannuation trustees review the draft legislation with particular focus on the penalties for false and misleading statements and ASIC's power to ban persons from performing financial services functions.



SG Penalty

11 September 2019
Consultation

[LINK TO DETAILS](#)

The ATO has issued draft *Practice Statement Law Administration PS LA 2019/D1* for consultation. The statement sets out the considerations for making a decision on the remission, in whole or in part, of the additional super guarantee charge (SGC) imposed under subsection 59(1) of the *Superannuation Guarantee (Administration) Act 1992* and when penalty relief is appropriate.

Additional SGC (referred to as the Part 7 penalty) is imposed when an employer fails to provide, when required: an SG statement for a quarter, or information relevant to assessing the employer's liability to pay SGC for a quarter. The penalty is automatically imposed on an employer by law and is equal to 200% of the SGC payable for the quarter. The ATO has discretion to remit the penalty in whole or in part.

The statement describes when it is appropriate to provide penalty relief and what should be done before a remission decision is finalised.

QMV recommends that superannuation trustees review the practice statement to understand the ATO's procedures and considerations in applying penalties and when associated employer's may be at risk of penalty application.

ABOUT QMV

QMV is an independent financial services consulting firm. We provide hands-on advisory, consulting and technology to Australia's leading superannuation, insurance, banking and wealth management organisations. We offer a wide range of advisory and consulting services that support our clients to enact mandatory, technological, structural or strategic change as simply and affordably as possible.

 VISIT WEBSITE



PROJECTS



TECHNOLOGY



DATA MANAGEMENT



REMEDICATION



LEGAL AND RISK



MANAGEMENT CONSULTING

NEED ASSISTANCE?



QMV partners with superannuation fund trustees and administrators to adapt to changes in the legal and regulatory environment.

If you have any questions or need assistance, you can contact Jonathan Steffanoni, Principal Consultant, Legal & Risk directly at jsteffanoni@qmv-solutions.com

 SUBSCRIBE TO QMV REGULATORY UPDATES

OFFICE CONTACTS

sayhi@qmv-solutions.com | 03 9620 0707
 Level 4, 10 Queen Street
 Melbourne Victoria 3000

sayhi@qmv-solutions.com | 02 8705 5409
 Level 5, 20 Bond Street
 Sydney NSW 2000