

# QMV

## LEGAL & REGULATORY UPDATE

### PENSIONS AND SUPERANNUATION

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- APRA and ASIC Corporate Plans

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#### IN BRIEF

*The winter Parliamentary break in August has seen a shift in focus to subordinate legislation, consultation, and policy. There was still plenty of important activity for pensions and superannuation trustees to understand and act on.*

*The **Member Outcomes Prudential Standard** was finalised, while the related draft Prudential Guidance on the **Business Performance Review** was released. Draft guidance on the **Whistleblower Protection reforms** and detail on transitioning to abolish **grandfathered commissions** were also released by ASIC.*

*The **regulatory policy agendas** of Treasury, APRA, and ASIC were announced, and ASIC is consulting on use of its new **product intervention powers** for binary options.*

*The Spring Parliamentary sittings are just around the corner and promise a busy regulatory change agenda for the superannuation industry.*

## MAJOR REFORM UPDATES



### Member Outcomes

28 August 2019  
Finalised Standard &  
Guidance Consultation

[LINK TO DETAILS](#)

APRA finalised *SPS 515 Strategic Planning and Member Outcomes*, adding the requirement to undertake an annual Business Performance Review to assess performance in achieving strategic objectives across business operations.

Consultation completed in April sought to clarify how Prudential Standard SPS 515 Strategic Planning and Member Outcomes would interact with the legislated outcomes assessment.

APRA has also released a revised draft SPG 516 renamed Business Performance Review ('BPR') for a six-week consultation period, with expectation that it will release a final version in December. The commencement date for SPS 515 remains 1 January 2020 (however RSE Licensees do not have to consider the result of the legislated outcomes assessment in undertaking their first BPR).

APRA also announced it plans to start publishing assessments of performance based on a range of measures and benchmarks, including investment returns, fees and charges, sustainability and (in due course) insurance, starting with MySuper products.

*QMV recommends that superannuation trustees familiarise themselves with the new SPS 515, ensure business practices have been amended as needed to account for the new requirements, and, as encouraged by APRA, consider undertaking a trial outcomes assessment for all, or a subset of, its products in 2020. Additionally, trustees should review and provide feedback on SPG 516.*



## Whistleblower Policies

7 August 2019  
Guidance Consultation

[LINK TO DETAILS](#)

The *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* was recently passed to amend the whistleblower protections in the *Corporations Act*. This includes requiring that corporate trustees of RSEs have whistleblower policies by 1 January 2020. The new obligations require entities to have a whistleblower policy that covers, among other things:

- the protections available to whistleblowers;
- to whom disclosures that qualify for protection under the Corporations Act may be made, and how they may be made;
- how the entity will support whistleblowers and protect them from detriment;
- how the entity will investigate disclosures that qualify for protection;
- how the entity will ensure fair treatment of its employees who are mentioned in disclosures that qualify for protection, or its employees who are the subject of disclosures; and
- how the policy will be made available to officers and employees of the entity.

ASIC released Consultation Paper 321 seeking feedback on its draft whistleblower regulatory guidance. The draft regulatory guide provides guidance on matters an entity's whistleblower policy must address and good practice guidance on establishing, implementing and maintaining a whistleblower policy.

*QMV recommends that superannuation trustees review the consultation paper and ASIC's proposed guidance and provide feedback to ASIC if they foresee difficulties in applying the guidance to their own whistleblower policies and procedures. RSE Licensees should also commence planning for reviewing and revising any existing Whistleblower policies.*



## Royal Commission Reform Agenda

19 August 2019  
Policy Statement

[LINK TO DETAILS](#)

Treasury has released its Financial Services Royal Commission Implementation Roadmap, setting out how it will deliver on the 54 Royal Commission recommendations directed to the Government and 18 further commitments based on the Hayne Report.

To date the Government has implemented 15 commitments. The Government's commitments include:

- Legislation ending grandfathered commissions, applying unfair contract terms provisions in insurance contracts, and introducing measures to strengthen ASIC's enforcement powers by end-2019; and
- Legislation relating to no other role or office for trustees of RSEs; no hawking of superannuation products; limitations on deducting advice fees superannuation accounts; and adjustments to APRA and ASIC's roles in superannuation by 30 June 2020.

Excluding the reviews that are to be conducted in 2022, Treasury expects that close to 90 per cent of commitments will have been implemented by mid-2020, with legislation addressing all Hayne recommendations introduced to Parliament by the end of 2020.

*QMV recommends that superannuation trustees ensure adequate resources are available to plan and implement the remaining Royal Commission recommendations. Consideration should also be given to the impact of new requirements on current operations and outsourced arrangements.*



## APRA Royal Commission Recommendations

19 August 2019  
Announcement

[LINK TO DETAILS](#)

APRA has issued an update on its implementation of the recommendations directed to it by the Royal Commission.

Among already-released for consultation prudential standards, APRA's update gives insight into the regulator's upcoming actions:

- Consultation on proposed changes to its prudential framework, resulting from its post-implementation review with a view to finalising them in 2020, including implementation of proposed enhancements relating to strengthening requirements on trustees when selecting an insurer;
- Finalised requirements under the BEAR for product management and customer remediation by end 2019;
- Development of an enhanced approach to supervision of governance, culture, remuneration and accountability with a statement of its approach published by end of 2019; and
- Publishing of a Memorandum of Understanding between it and ASIC and accountability statements of the kind required under Bear by the end of 2019.

*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. Changes in regulatory approach may also be relevant for regulatory risk assessments.*



## Ending Grandfathered Commissions

21 August 2019  
Announcement

[LINK TO DETAILS](#)

ASIC has announced that it is investigating the transition away from grandfathered conflicted remuneration.

The *Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Bill 2019* remains in the House of Representatives. The Bill would amend the *Corporations Act 2001* to remove grandfathering arrangements for conflicted remuneration and other banned remuneration effective 1 January 2021.

The investigation will review the steps taken by industry participants from 1 July 2019 to the 2021 deadline, impediments to the transition and the extent to which benefits are being passed on to affected clients. The investigation will consist of:

- Surveying entities known to pay grandfathered conflicted remuneration to AFS Licensees or their representatives, requiring entities to provide data for a 12-month period initially and subsequently on a quarterly basis for the review period; and
- Detailed engagement and analysis.

ASIC will analyse the information it obtains from the investigation and report to the Treasurer by 30 June 2021.

*QMV recommends that superannuation trustees that receive conflicted remuneration payments stay abreast of ASIC's investigation and ensure readiness for the transition. Where an AFS Licensee has a significant dependence on revenue from conflicted remuneration, strategic and financial plans should be reviewed to account for the changes in permitted revenue.*

## TECHNICAL CHANGES AND UPDATES



### AFCA Naming of Firms

26 August 2019  
Legislative Instrument

[LINK TO DETAILS](#)

ASIC approved changes to the AFCA Rules, permitting AFCA to name financial firms in published determinations.

To date, publications of determinations are made public, but the names of the firms involved in the complaints are not published. With the change consumer parties to the complaint will remain anonymous, but the firm name will be published.

ASIC views this change as one that can help identify conduct or market problems within firms or affecting specific products or services, as well as highlighting where firms have done the right thing, increasing transparency and accountability.

AFCA will issue updated operational guidelines setting out examples of the circumstances in which a determination naming a firm would not be published.

*QMV recommends that superannuation trustees review the AFCA's updated operational guidelines. The change may also warrant a revision of an RSE Licensee's reputational risk assessments and control environment.*



### Binary Options

22 August 2019  
Consultation Paper

[LINK TO DETAILS](#)

ASIC has released *Product intervention: OTC binary options and CFDs*, a consultation paper on its proposals to address significant detriment to retail clients resulting from over-the-counter ('OTC') binary options (according to ASIC: an 'all of nothing bet on the outcome of an event') and contracts for difference 'CFDs' (a contract on the opening and closing price of an asset).

ASIC proposes a complete ban of OTC binary options and conditions imposing leverage ratio limits, a standardised approach to automatic close-outs of retail client positions, protection against negative balances, prohibition of certain inducements and enhanced transparency of CFD pricing, execution, costs and risks.

*QMV recommends that AFS Licensees review the consultation paper, and consider the implications on their investment mandates and activities, operational structures and comment where appropriate before comments close date of 1 October 2019.*



### OTC Derivative Risk Management

14 August 2019  
Consultation

[LINK TO DETAILS](#)

APRA consulted on revisions to *Prudential Standard CPS 226 Margining and risk mitigation for non-centrally cleared derivatives (CPS 226)* based on the Basel Committee on Banking Supervisions (BCBS) and the International Organization of Securities Commissions' (IOSCO) release of amendments to margin requirements. The revisions include:

- an extension to the timeline for final implementation of margin requirements;
- an increase to the qualifying level of aggregate average notional amount of non-centrally cleared derivatives; and
- amendment of the list of foreign bodies whose margin requirements are approved for substituted compliance with the margin requirements in CPS 226 to include the UK's Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) (should the UK cease to be covered by EU bodies).

*The changes may affect superannuation trustees which utilise OTC derivatives to manage investment related risks. QMV recommends that superannuation trustees review the suggested revisions and remain cognizant of any impact of a revised CPS 226 to fund operations.*



## Superstream for SMSF Rollovers

08 August 2019  
Legislative Instrument

[LINK TO DETAILS](#)

The *Treasury Laws Amendment (Deferring Extension of SuperStream to Self-Managed Superannuation Funds) Regulations 2019* amend the SIS Regulations to defer the start date for extending the operation of SuperStream to SMSFs from 30 November 2019 to 31 March 2021.

The deferral results from the 2019-20 Budget measure to bring electronic release authorities into SuperStream, meaning that system changes to update SuperStream will only need to be undertaken once, reducing administrative costs.

The extension of SuperStream to SMSFs will enable SMSF members to initiate and receive rollovers electronically between an APRA fund and their SMSF. Currently, only rollovers between APRA funds can be transferred electronically using SuperStream.

*No action is required from Superannuation Trustees. The impact of superannuation trustees is likely to be indirect, affecting the operational ease of member transfers to and from SMSFs.*



## Supervisory Levy

16 August 2019  
Consultation

[LINK TO DETAILS](#)

Treasury is seeking submissions on the design and operation of the Financial Institutions Supervisory Levy focused on the methodology applied in calculating levies. Since the introduction of the *Financial Institutions Supervisory Levies Collection Act 1998*, the scope of levies imposition has expanded.

During 2018-19, APRA's funding was increased significantly through the Government Response to Royal Commission and APRA- New and expanded functions. To maintain equity within the industries for the restricted levy components, the levy maximums for Super were increased significantly by around 85 per cent to accommodate this large overall increase.

Consultation issues include whether the current levy base is appropriate for each industry sector and the changes stakeholder would find useful to the annual levies consultation process.

*QMV recommends that superannuation trustees review the consultation paper, consider the implications of the levy structure on the levies their fund's pay and provide feedback.*

## GUIDANCE AND POLICY



## APRA Corporate Plan 2019-2023

29 August 2019  
Policy

[LINK TO DETAILS](#)

APRA has published its updated Corporate Plan focusing on regulation of non-financial risks and improving outcomes for superannuation members, as part of its four areas of strategic focus which also include improving cyber-resilience across the financial system and transforming governance, culture, remuneration and accountability across all regulated financial institutions.

APRA plans to achieve its objectives through the following actions, among others:

- Ensuring member protection by robust governance practices and operational controls and systems, designed to safeguard members' funds from theft or loss;
- Driving an uplift in industry standards for performance assessment;
- Improving transparency of performance by collecting and publishing new, more granular data and benchmarking performance and outcomes;
- Enhancing transparency on supervisory actions and emerging areas of best practice identified through industry-wide reviews; and
- Facilitating the resolution or exit of persistently underperforming superfunds.

*QMV recommends that superannuation trustees consider APRA's Corporate Plan as a foreshadowing what is to come from the regulator and its potential impacts.*



## Climate Change Disclosure

12 August 2019  
Guidance

[LINK TO DETAILS](#)

ASIC clarified the application of its existing regulatory guidance to the disclosure of climate change related risks and opportunities.

ASIC reviewed its guidance in response to the Senate Economics References Committee report on Carbon Risk and the Government's response to it. While ASIC found its guidance fit for purpose, updates included:

- Incorporation of types of climate change risk that may need to be disclosed in a prospectus;
- Highlight of climate change as a systematic risk that can impact an entity's financial prospects and may need to be disclosed in an operating and financial review (RG 247.66); and
- Revision of INFO 203: *Impairment of non-financial assets: Materials for directors* to highlight climate change and other relevant risks for key assumption underlying impairment calculations.

*QMV recommends that superannuation trustees the changes to disclosure requirements, especially those with in-house or outsourced investment operations and ESG risk management policies and practices.*



## ASIC Corporate Plan

28 August 2019  
Policy

[LINK TO DETAILS](#)

ASIC published its Corporate Plan for 2019-20 to 2022-23, setting out its strategic change program. The plan includes its new enforcement strategy, which is focused on increased and accelerated court-based outcomes, more intensive supervision to improve the culture and behaviour of financial firms and greater use of artificial intelligence, data analytics and behavioural sciences tools.

ASIC's activities will be focused on addressing harm to consumers and markets through seven regulatory priorities, including delivering as conduct regulator for superannuation. In acting as superannuation regulator, ASIC plans to improve outcomes in super through:

- Taking decisive regulatory and enforcement action to deter misconduct, and supporting legislative reforms;
- Supervision and surveillance of superannuation trustees focusing on whether trustees act in the best interest of consumers and treat them fairly; and
- Implementation of superannuation recommendations of the Royal Commission.

Among other key projects, ASIC's plan points to its work to issue an updated Regulatory Guide 97 *Disclosing fees and costs in PDSs and periodic statements*, its examination of advice services offered by super funds, and its support for the extension of BEAR to superfunds.

ASIC also notes that it is engaged in what it deems "a large volume of work relating to potential misconduct by major financial institutions and their representatives," a number of which ASIC states will likely result in referrals for criminal prosecution.

*QMV recommends that superannuation trustees review ASIC's Corporate Plan alongside operational practices, product offerings and disclosure and fee practices to ensure compliance with best interest duties. RSE Licensee's may also wish to consider whether regulatory risk assessments should be revised, and the control environment is adequate.*

## 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.

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## 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](mailto:jsteffanoni@qmv-solutions.com)

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