

QMV

REGULATORY UPDATE

PENSIONS AND SUPERANNUATION

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Jonathan Steffanoni
Principal Consultant
Legal & Risk

IN BRIEF

The heavy focus on regulatory change for the superannuation industry continued during March and early April as we move closer to the **Commonwealth election**.

The 2019-20 **Commonwealth budget** was one of stability, albeit with a handful of minor and non-controversial policy announcements.

The **Member Outcomes, Protecting Your Super. Package, and Design & Distribution Obligations** all passed Parliament and will come into law. There was also progress with the **Consumer Data Right**, abolishing **Grandfathered Conflicted Remuneration**, and **AFCA Rules** updates.

Consultation also commenced on **universal life insurance policy terms for MySuper** products and making some provisions from **industry codes enforceable**.

APRA also issued guidance on very 21st century challenges of **Information Security** and **Climate Change** risk management.

MAJOR REFORM UPDATES



Protecting Your Super

13 March 2019
Royal Assent

[LINK TO DETAILS](#)

The *Treasury Laws Amendment (Protecting Your Superannuation Package) Bill 2018* received royal assent on 12 March 2019. The Act implements the Protecting Your Super Package announced in the 2018/19 Commonwealth Budget.

Amendments have been made to the regulations, with *Treasury Laws Amendment (Protecting Your Superannuation Package) Regulations 2019* making minor amendments to the:

- Insurance inactivity definition and notice requirements;
- Technical periodic reporting and product disclosure definitions; and
- Account consolidation and balance reunification particulars.

QMV recommends that all superannuation trustees prioritise engagement of internal resources and service providers to ensure that business systems, procedures and assurance is in place by the commencement date.

Trustees should model the impact of the reforms on member fees and insurance premiums. Trustees should also consider the impact of low residual balances after partial payments and obligations to refund certain fees.



Design & Distribution Obligations

3 April 2019
Awaiting Royal Assent

[LINK TO DETAILS](#)

Parliament passed the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018* with amendments. The Act implements recommendations from the Financial System Inquiry to:

- impose design and distribution obligations for financial products to ensure that products are targeted at the right people; and
- a product intervention power for ASIC when there is a risk of significant consumer detriment.

The amendments:

- extend the regime to financial products regulated under the *ASIC Act*;
- provide a further private cause of action where an entity fails to make a target market determination under the design and distribution obligations (DDO) regime; and
- enable the court, on application from ASIC, to make orders to benefit non-party consumers who have suffered loss or damage because of contraventions of the DDO regime.

These reforms align with the recommendations of the Hayne Royal Commission.

QMV recommends that superannuation trustees review existing products issued and distributed to identify any risks of non-compliance or regulatory intervention.



AFCA Changes

18 March 2019
Legislative Instrument

[LINK TO DETAILS](#)

The Australian Financial Complaints Authority (AFCA) has made several changes of interest to superannuation trustees, including:

- a legislative instrument, *Treasury Laws Amendment (AFCA Cooperation) Regulations 2019* requiring that members must provide AFCA with reasonable assistance to allow the prompt and fair resolution of complaints;
- expanding AFCA's jurisdiction to include eligible complaints dating back to 1 January 2008. This period where they can handle legacy complaints is planned to operate for a period of 12 months from 1 July 2019;
- payment of legacy unpaid external dispute resolution determinations issued under the Terms of Reference for the Financial Ombudsman Service and the Credit and Investments Ombudsman Rules.

QMV recommends that superannuation trustees ensure that the relevant business unit and representatives, or service provider is aware of the changes in their obligations to AFCA, and possible increase in such claim volumes.



Consumer Data Right

29 March 2019
Draft rules released

[LINK TO DETAILS](#)

The ACCC has released draft rules for the Consumer Data Right (CDR) for consultation, following the previous publication of a Rules Framework in September 2018 and a Rules Outline in December 2018.

The consultation will inform the continued development of the rules and a future Privacy Impact Assessment.

The *Treasury Laws Amendment (Consumer Data Right) Bill 2019* was introduced into the House of Representatives on 13 February 2019 and commences for major banks as data holders from 1 July 2018 should it pass.

QMV recommends that superannuation trustees identify and consider the strategic opportunities which may be presented by the implementation of Open Banking, and the strategic risks which the future designation of superannuation funds as data holders under the regime may present.



Industry Code Enforceability

18 March 2019
Consultation

[LINK TO DETAILS](#)

Treasury has commenced industry consultation on proposed legislation which would implement the Hayne Royal Commission recommendation 1.15.

The proposed legislation would see ASIC given powers to determine certain industry code provisions to be enforceable by law, and contravention thereof constituting a breach of the law.

The enforceable industry code provisions would apply to AFS Licensees, authorised representatives and issuers of financial products, and require that:

- Provisions which are intended to be enforceable be identified by industry;
- Industry seek ASIC approval and review of voluntary codes; and
- Enforcement remedies would be available, including pecuniary, injunctions, damages, enforceable undertakings and punitive orders.

The consultation is open for comments until 12 April 2019.

QMV recommends that superannuation trustees engage with industry associations responsible for the maintenance of any voluntary codes which they participate, paying particular attention to identifying provisions which may be enforceable.



Grandfathered Conflicted Remuneration

18 March 2019
Draft Regulations

[LINK TO DETAILS](#)

Treasury has released exposure draft regulations to support the *Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Bill 2019 (Exposure Draft Bill)* for consultation which was released in February.

The Exposure Draft Bill removes the grandfathering arrangements for conflicted remuneration and other banned remuneration from 1 January 2021. It also enables regulations to be made to pass through to customers of the benefits of any previously grandfathered conflicted remuneration remaining in contracts after 1 January 2021.

The exposure draft regulations have been released providing details on the process of how benefits will be passed through to the customer, as well as impose record keeping obligations.

QMV recommends that any superannuation trustee which currently pays grandfathered conflicted remuneration to financial advice suppliers should assess the impact of the change on the operational and commercial environment as part of strategic planning activities.



Universal Insurance Terms Review

28 March 2019
Consultation

[LINK TO DETAILS](#)

Treasury has released a consultation paper regarding the recommendation from the Hayne Royal Commission seeking to standardise MySuper insured benefit terms through legislating universal key terms, definitions and exclusions for default insurance cover for all MySuper products.

Treasury's consultation paper seeks industry feedback on the merits of prescribing:

- a higher level of minimum cover for life insurance than is currently provided in *Superannuation Guarantee (Administration) Regulations 2018*;
- providing a minimum level of cover for permanent incapacity insurance;
- defining maximum levels of cover; and
- a fixed level of cover for life and/or permanent incapacity insurance, to set a standard level of default insurance across all MySuper products.

Treasury is seeking comments until 26 April 2019.

QMV recommends that all superannuation trustees holding MySuper products or licenses assess the impact of prescribing these specific definitions into legislation and supply any feedback to Treasury before 26 April 2019.

TECHNICAL CHANGES AND UPDATES



Claims Handling

29 March 2019
Consultation Paper

[LINK TO DETAILS](#)

Treasury has completed a brief consultation on proposed changes to remove the exemption of claims handling from the definition of financial services in the Financial Services Law.

The proposed change addresses a recommendation of the Hayne Royal Commission and will see ASIC responsible for regulating insurance claim handling, including ensuring that claims are handled efficiently, honestly, and fairly.

The consultation acknowledges concerns arising with unintended consequences of this removal, such as claims handling staff being classified as providers of financial advice.

QMV recommends that superannuation trustees review the submissions from the submissions when they are released and plan for future legislation to give effect to the change.



Corporate and Financial Sector Penalties

25 March 2019
Legislative Instrument

[LINK TO DETAILS](#)

The *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Regulations 2019* have been determined, following the recent passage of the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019*.

The regulations apply to offences under the *Corporations Act* and *Insurance Contracts Act* and are intended to:

- prescribe the list of offence, civil penalty and key requirement provisions that are subject to an infringement notice regime;
- ensure consistency between the penalties in the Act and the Regulations; and
- Amend cross referencing errors and enable transitional provisions.

QMV recommends that superannuation trustees consider the impact of the increased penalties on the severity of regulatory and compliance risks.



Single Touch Payroll

29 March 2019
Legislative Instrument

[LINK TO DETAILS](#)

The ATO has issued legislative instruments related to the Single Touch Payroll laws. These legislative instruments operate to:

- exempts entities which administer a Portable Long Service Leave scheme or a Portable Redundancy scheme from reporting under Single Touch Payroll in respect of payments made to members of the scheme;
- exempts insolvency practitioners from mandatory reporting through Single Touch Payroll for the 2018-2019 financial year in respect of the entities they administer; and
- exempts Withholding Payee Number Holders from reporting under Single Touch Payroll for the 2018-2019 and 2019-2020 financial years.

No further action required from superannuation trustees.



FASEA Professional Standards

25 March 2019
Legislative Instrument

[LINK TO DETAILS](#)

FASEA has issued an exposure draft of *Relevant Providers Degrees, Qualifications and Courses Standard (Amendment No. 1)* Legislative Instrument for consultation.

The Legislative Instrument has been updated with additional information from higher education providers on their historical degrees and as well extends the range of approved historical programs, for the purposes of education and training standards that financial planners and advisers must meet under the *Corporations Act 2001*.

QMV recommends that superannuation trustees with employees or representatives required to meet the FASEA professional standards review the proposed changes and provide any feedback (particularly known missing existing qualifications) to FASEA.



Superannuation Contributions Tax

13 March 2019
Regulations Remade

[LINK TO DETAILS](#)

The ATO has remade regulations dealing with the superannuation contributions tax (also known as the superannuation contributions surcharge) to replace the existing 1997 regulations, which were due to sunset (expire).

The *Superannuation Contributions Tax (Assessment and Collection) Regulations 2019* and the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 2019* repeal and replace the 1997 regulations with effect from 1 April.

The surcharge was in effect for contributions between 1 July 1996 and 30 June 2005, and charges certain contributions for benefits accrued by high income earners in that period. Payment would be deferred until these members receive the benefit, thus the need to maintain these regulations.

QMV recommends that superannuation trustees amend references to the expired regulations with the current regulations in business literature and knowledge management systems.



Requirements for Annuities

27 March 2019
Legislative Instrument

[LINK TO DETAILS](#)

The Minister for Families and Social Services has issued *The Social Security (Financial Investment) (Requirements for Annuity Contracts) Determination 2019*, which prescribes requirements that an annuity contract must satisfy in order for the annuity to be a financial investment for social security purposes.

The *Social Security and Other Legislation Amendment Act 2014* extended the deeming rules in the Act to account-based income streams that commenced after 1 January 2015. This extension was intended to capture account-based products that are equivalent to account-based pensions, such as account-based annuities and allocated annuities.

This Determination ensures that annuities, including allocated and account-based annuities, are treated in the same way as account-based pensions for social security purposes.

QMV recommends that superannuation trustees that for or have issued account-based pension products ensure that any disclosed or published material, or customer service guidelines contain material which is inconsistent with the amended operation of the deeming provisions for account-based pensions under the aged pension means test.

GUIDANCE AND POLICY



Commonwealth Budget 2019-20

2 April 2019
Policy Announcement

[LINK TO DETAILS](#)

The Commonwealth Government released its budget for the 2019-20 financial year, including minor policy announcements related to superannuation. The superannuation related announcements included:

- the removal of the Work Test and the extension of 'bring forward' arrangements for members aged 65-66 years;
- making existing tax relief for merging superannuation funds permanent;
- to scope the permanent funding of a Superannuation Consumer Advocate;
- spouse contributions age limit increasing from age 70 to age 74;
- expanding the use of the SuperStream infrastructure from 31 March 2021;
- increased funding to the ATO to recover unpaid tax and superannuation liabilities from larger businesses and high wealth individuals; and
- increased resourcing to regulatory bodies APRA and ASIC to strengthen regulatory capacity & capability.

Notably, there were no announced changes to the legislated timeframes for increasing Superannuation Guarantee contributions from the current rate of 9.5% to 12%.

Superannuation trustees should note these policies, as the announcements are likely to form part of the agenda of the next government following the election irrespective of the composition of Parliament.



Information Security Risk Management

25 March 2019
Guidance

[LINK TO DETAILS](#)

APRA has issued a practice guide for CPG 234, APRA's prudential standard on Information Security. It aims to target areas where weaknesses in information security are a part of APRA's ongoing activities in supervision.

The draft guidance covers aspect of information security risks such as:

- Roles and responsibilities;
- Information security capability;
- Policy framework & hierarchy;
- Information asset classification; and
- Control effectiveness testing and incident management.

QMV recommends that superannuation trustees review the draft guidance and provide any suggestions of feedback to APRA. Trustees should also consider a review to determine the appropriateness of information security approach.



Climate Risk Management

25 March 2019
Guidance

[LINK TO DETAILS](#)

APRA has issued an information guide detailing how it intends to increase scrutiny of how superannuation trustees are managing the financial risks of climate change to their funds and members.

The guidance clarifies that APRA expects that climate risks be assessed within existing prudential risk management standards CPS 220 and SPS 220, and that supervisors will be factoring this into their ongoing supervisory activities.

The Information Paper also contains a stocktake of actions and initiatives underway in Australia and internationally in response to growing awareness of the physical, transitional and liability risks of climate change, and states that the risks are material, foreseeable and actionable.

QMV recommends that superannuation trustees ensure that climate related risks are being managed as part of the trustee's risk management framework.

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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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

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OFFICE CONTACTS

sayhi@qmv-solutions.com | 03 9620 0707
Level 4 10-16 Queen Street
Melbourne 3000

sayhi@qmv-solutions.com | 02 8705 5409
Level 11, 66 Clarence Street
Sydney 2000