

# QMV

# REGULATORY UPDATE

## PENSIONS AND SUPERANNUATION

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### IN BRIEF

The final weeks of the 45<sup>th</sup> Commonwealth Parliament saw the legislation for major superannuation reforms pass, while cleaning up a backlog of Bills which lapsed when Parliament was prorogued. A moment to take a short breath between heavy policy and regulatory agendas.

Bills related to **Member Outcomes, Civil & Criminal Penalties, Treating Employers, and Financial Product Design & Distribution Obligations** all passed into law.

The regulators remained active throughout April, with important consultation on **binding beneficiaries and kinship structures**, the results of APRA's **review of the prudential framework**, and a joint letter to superannuation trustees in relation to **fee assurance, governance and oversight**.

## MAJOR REFORM UPDATES



### Lapsed Super. Bills

11 April 2019

[LINK TO DETAILS](#)

The following superannuation related bills have lapsed, with Parliament being prorogued after the 18 May election was called:

- *Treasury Laws Amendment (Putting Members' Interests First) Bill 2019* intending to prevent trustees from providing insurance on an opt out basis to members under 25 years old and beginning to hold a new product on or after 1 October 2019 and members with balances below \$6,000. The proposed legislation was originally a part of the PYSP.
- *Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019* creating a new Commonwealth business registry regime and introduce a director identification number requirement to provide traceability of directors across companies.
- *Treasury Laws Amendment (2018 Superannuation Measures No 1) Bill 2018* intending to encourage employers to voluntarily disclose historical superannuation guarantee non-compliance.
- *Treasury Laws Amendment (Strengthening Trustee Arrangements) Bill 2017* requiring RSE licensees to have at least one-third independent directors and for the Chair of the Board to be independent.
- *Treasury Laws Amendment (Consumer Data Right) Bill 2019* creating a right for individuals to access data in relation to them.

*Trustees should note that these Bills will not proceed in the current Parliament, however similar legislation may be introduced in future.*



## Member Outcomes

5 April 2019  
Royal Assent

[LINK TO DETAILS](#)

The *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2019* received royal assent on 5 April 2019. The Bill passed with several important amendments:

- Requirement that RSE licensees look through PSTs in meeting obligation to make portfolio holdings information publicly available;
- Clarification that obligations in the Bill apply equally to all choice and MySuper products.

APRA has also sought consultation on proposed amendments to Prudential Standard *SPS 515 Strategic Planning and Member Outcomes* which was issued last December.

APRA has revised the standard to clarify how the passage of the Bill interacts with APRA's requirements, including documenting the methodology applied in undertaking the legislated outcomes assessment in addition to separately considering scale and operating costs of its business operations on the financial interests of members.

*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.*



## Civil Penalties for SIS Duty Breaches

5 April 2019  
Royal Assent

[LINK TO DETAILS](#)

The *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2019* also contains several important amendments related to the imposition of civil and criminal penalties for breaches of certain trustee statutory duties:

- Imposition of civil and criminal penalties on trustees and directors of corporate trustees who fail to execute their responsibilities to act in the interest of member beneficiaries, or who use their position to further their own interests to the detriment of member beneficiaries; and
- New APRA directions powers to impose the above civil or criminal penalties as well as powers to refuse authority for change in ownership or control of an RSE licensee; to remove or suspend an RSE licensee; and to collect data relating to management and operation of funds.

*QMV recommends that all superannuation trustees ensure that individual trustee directors are aware of the changes, and that any impact on the trustee's risk appetite or risk profile is appropriate to reflect the changes.*



## Treating Employers

5 April 2019  
Royal Assent

[LINK TO DETAILS](#)

The *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2019* also contains important amendments related to the treating of current or prospective default employers.

The Act prohibits and imposes penalties on trustees who breach prohibitions to use goods or services to influence employers to nominate the fund as a default fund or influence employers to encourage their employees to nominate the fund as their choice fund.

*QMV recommends that superannuation trustees should actively engage business development and employer relationship staff in adopting a risk-based approach to compliance.*



## Design & Distribution Obligations

5 April 2019  
Royal Assent

[LINK TO DETAILS](#)

The *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018* with amendments received Royal Assent on 05 April 2019. 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

6 April 2019  
Legislative Instrument

[LINK TO DETAILS](#)

The Government announced that financial firms will be required by law to cooperate with the Australian Financial Complaints Authority (AFCA) to resolve financial complaints.

This comes from Commissioner Hayne's recommendation that "AFSL holders should be obliged to take reasonable steps to co-operate with AFCA in resolution of particular disputes." Additionally, AFCA is likely to expand its capacity to respond to legacy complaints.

*QMV recommends that superannuation trustees ensure that relevant business units and representatives, and service providers are aware of the changes in obligations to AFCA.*



## Protecting Your Super

17 April 2019  
Regulator Communication

[LINK TO DETAILS](#)

ASIC has warned trustees that it may take action where a trustee provides misleading communications about the Protecting Your Super laws. ASIC reinforced that any information provided should be balanced and factual and communicated responsibly. ASIC pointed out that it is not appropriate for trustees to encourage all members to retain insurance or those with low-balance accounts to keep their account within the fund.

ASIC, APRA and the ATO are working together to ensure the changes are implemented appropriately.

ASIC has also provided consumer information on the changes and specifically insurance cancellation on its MoneySmart website.

*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. QMV also encourages superannuation trustees to participate in regulator focus groups.*

## TECHNICAL CHANGES AND UPDATES



### Binding Nominations & Kinship Structures

29 March 2019  
Consultation Paper

[LINK TO DETAILS](#)

In response to a Royal Commission recommendation that the Government explore the difficulties Aboriginal and Torres Strait Islander people face in making binding death benefit nominations, the Government has published a discussion paper exploring the law on superannuation death benefits, kinship structures and the treatment of kinship structures in other areas of law, including wills and intestacy law, family law and unpaid family and domestic violence leave.

The Government poses seven discussion questions, including:

- how superannuation funds currently deal with kinship relationships;
- whether there are case studies or examples where kinship structures are not appropriately considered by superannuation trustees;
- whether kinship structures mean people have dependants not currently recognised as such by superannuation law; and
- whether there are differences in the barriers faced by Aboriginal and Torres Strait Islander women and men in making binding death benefit nominations.

The Government will use feedback to decide what law changes, if any, are required to address kinship structures in superannuation death benefit laws. Trustees can submit responses to the consultation until 24 May 2019.

*QMV recommends that superannuation trustees review the paper and submit responses to the extent applicable.*



### Choice Dashboard

8 April 2019  
Legislative Instrument

[LINK TO DETAILS](#)

ASIC has continued to defer the start date for the disclosure of a choice product dashboard through its amendment of ASIC Class Order [CO 14/443] and ASIC Class Order [CO 13/534]. The amendments defer the commencement of relevant obligations until 1 July 2023.

Trustees should not assume that the deferral will remain effective for the entire period, as ASIC will amend the relief once policy positions are settled.

*QMV recommends that superannuation trustees ensure they have the processes in place to publicly disclose a choice product dashboard and make information relating investment assets publicly available.*



### SMSF Membership Limit

2 April 2019  
Bill Amended

[LINK TO DETAILS](#)

The Government has dropped proposed amendments to increase the maximum number of allowable members in an SMSF from four to six from the *Treasury Laws Amendment (2019 Measures No. 1) Bill 2019*. The proposed legislation was announced last year as part of a Bill dealing primarily with unrelated tariff reforms.

While a Parliamentary committee inquiry into the Bill recommended its passing, opposition committee members opposed the inclusion of the SMSF member cap in the Bill pointing to the fact that there has been no "formal public consultation conducted by Treasury on this measure." The Government, however, continues to support the member cap increase.

*No action required from superannuation trustees currently, however, QMV anticipates that this topic will come up again in the near future.*

## GUIDANCE AND POLICY



### APRA Review of Prudential Framework

30 April 2019  
Guidance

[LINK TO DETAILS](#)

APRA has issued an information paper on the current prudential framework following its review of the effectiveness of standards in meeting their objectives to improve processes and practices in the best interest of members. While APRA has concluded that its superannuation prudential framework has largely met its original objectives, it has not kept pace with higher expectations from members, regulators and the broader community in all areas.

The Paper identifies proposed enhancements that address some areas identified by the Royal Commission and the Productivity Commission, including strengthening requirements for managing conflicts of interest, investment governance and related party and intra-group outsourcing.

APRA will determine how the enhancements should progress in the next 12-18 months and will seek consultation on specific changes.

*QMV recommends that superannuation trustees review information paper as a foreshadowing of what to expect of prudential standard reforms.*



### APRA's New Enforcement Approach

16 April 2019  
Guidance

[LINK TO DETAILS](#)

APRA published its new Enforcement Approach setting out how it will use its enforcement powers in relation to prudential risks, including before the risks present an imminent threat to financial viability. While detailing APRA's enforcement criteria for identifying matters for potential enforcement, the criteria will not automatically lead to APRA taking enforcement action. APRA will consider the facts and circumstances of the particular situation, having regard for prudential risks, prevention, outcomes and deterrence. Other factors APRA will consider include proportionality, history and behaviour and relevant actions of other agencies.

APRA's Enforcement Approach comes after APRA's enforcement review that recommended APRA increase its enforcement appetite from 'last resort' to 'constructively tough'. The review recommended APRA achieve this through broadening its scope, taking earlier action and focusing on deterrence.

*QMV recommends that superannuation trustees familiarise themselves with APRA's Enforcement Approach and ensure readiness for a more active regulator.*



## Individual Disability Income Insurance

02 May 2019  
Regulatory  
Communication

[LINK TO DETAILS](#)

APRA sent a letter to all life insurers setting out its expectations in relation to individual disability income insurance (individual DII). "APRA is concerned that product design and pricing decisions may be contrary to the long-term interests of policyholders." APRA identified four themes where greater attention and action is needed:

- Strategy and Risk Governance: Clear identification of risk appetites, Board ownership and drive of strategy with appropriate oversight levels and lift of capacity and capability of risk functions.
- Pricing and Product Design: Greater consideration and transparency around risks associated with individual DII and related pricing and new product developments and adherence to insurability principles.
- Data: Improving the quality, quantity and timeliness of data and industry experience data.
- Resourcing: Proactive resourcing and skills.

APRA's thematic review outcomes will inform its supervision activities and benchmarking of life insurers.

*QMV recommends that superannuation trustees monitor the adequacy of their life insurer in relation to the metrics identified by APRA.*



## ASIC and APRA on Fees

10 April 2019  
Guidance

[LINK TO DETAILS](#)

APRA and ASIC have issued a letter to all RSE licensees reinforcing the importance of appropriate fee oversight and requirement that all trustees have strong governance, risk management and oversight processes to ensure that only appropriate and authorised fees are deducted from member accounts. The letter clarifies that APRA and ASIC expect that by 30 June 2019, all trustees will have reviewed the robustness of their existing governance and assurance arrangements related to fees and will have begun to address areas for improvement in a timely manner.

The letter identified the following issues that should be considered by Trustees:

- Are the deductions explicitly authorised by members? Are the deductions consistent with the authorisations and disclosures made to members?
- Have services been provided?
- Is the deduction consistent with the sole purpose test?
- Is the deduction in the best interests of members?

APRA and ASIC also clarified that remediation payment being made outside of the superannuation system may represent a breach of SIS legislation. The regulators intend to follow up with individual trustees as to the outcome of their reviews.

*QMV recommends that superannuation trustees ensure that they are conducting the recommended reviews with appropriate documentation of the factors considered in the reviews.*

## 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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