

QMV

REGULATORY UPDATE

PENSIONS AND SUPERANNUATION

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IN BRIEF

The **Protecting Your Super Package** comes into full force from 1 July, with regulatory guidance intending to assist superannuation trustees navigate some of the known issues with the existing laws. Treasury has also indicated that amendments will be made to address these issues.

The new financial year also saw the **Information Security prudential standard** come into effect, with draft amendments made to the related guidance. In addition, new laws related to the **contributions work test**, **whistle blowers**, and **modern slavery** reporting obligations commenced.

There were important developments in relation to ASIC's intended use of the **Design & Distribution Intervention Power**, **Age Pension means testing**, and changes to the **BEAR**, which is eventually bound for the superannuation industry.

MAJOR REFORM UPDATES



Commencement of new laws

1 July 2019
Legislation

[LINK TO DETAILS](#)

The commencement of the new financial year marks the commencement of several new laws which impact superannuation trustees. These include:

- Important parts of the **Protecting Your Superannuation Package**;
- Easing of **contributions work test** for members aged between 65–74 with balances of \$300K or less;
- Amendments to **whistle blower** laws;
- Prudential Standard CPS 234 (**Information Security**);
- **Modern Slavery** reporting requirements

QMV recommends that superannuation trustees ensure that arrangements are in place to ensure compliance with these changes.



Protecting Your Super Package

30 June 2019
Legislation

[LINK TO DETAILS](#)

Important aspects of the *Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019* come into effect on 1 July.

APRA has issued updated [guidance](#) to superannuation trustees, in the form of the FAQs on its website. The updates relate to the fees charged to members and insurance for inactive accounts, including guidance on:

- fee refunds for members leaving part way through the year;
- fee refunds for small amounts;
- longevity of insurance opt-in elections;
- electronic communications; and
- inclusion of insurance which is “on claim”.

The ATO has also updated its [guidance](#) on the reporting of inactive low-balance accounts in relation to:

- Reporting and paying of inactive low-balance accounts on the scheduled statement day (6);
- Update on fund identification of inactive low balance accounts and product level tests (8a);
- Acceptance of amounts \$6,000 or more (10a); and
- Fee cap refund from reserves (10c).

ASIC has amended [Class Order 14/1252](#) to ensure consistency with the Protecting Your Super legislation. This reflects the PYS ban on exit fees and applies to disclosure of fees and costs on Product Disclosure Statements for superannuation and managed investment products.

Treasury has also announced that it intends to legislate amendments to the Protecting Your Super legislation. If legislated, these changes will:

- allow for the aggregation of members’ interests in one or more products held within a superannuation account; and
- ensure the rights of members under fixed term insurance cover are not affected and insurance cover is not inappropriately removed.

QMV recommends that superannuation trustees ensure that arrangements are in place to administer the package and monitor compliance.

There are a broad range of considerations which should already have been taken into account, including the impact on fees, liquidity for transfers to the ATO, and communication and servicing of members.

Ongoing attention will be required to work closely with government and industry associations to ensure proposed amendments to the package address the necessary issues.



Product Intervention Powers

14 June 2019
Consultation

[LINK TO DETAILS](#)

ASIC initiated consultation on the proposed administration of its new product intervention power. The intervention power was legislated in the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019*.

The product intervention power allows ASIC to intervene and take temporary action where financial and credit products have resulted in, or are likely to result in, significant consumer detriment. The regulatory guide sets out the scope of the power, when and how ASIC expects to use the power, and how a product intervention order is made.

While the product design and distribution obligations have already come into law, the ASIC intervention powers are to commence on 5 April 2021.

QMV recommends that superannuation trustees ensure that arrangements are in place to ensure that product design and distribution activities comply.



AFCA Legacy Complaints

18 June 2019
Rule Change

[LINK TO DETAILS](#)

ASIC has approved changes permitting consumers and small businesses that were harmed by financial misconduct to access the AFCA scheme for a 12-month period dating back to 1 January 2008. The rule changes give effect to the AFCA authorisation condition introduced by the Government on 19 February 2019. A legacy complaint must:

- relate to a compulsory member of the AFCA scheme who is a member of the AFCA scheme at the time the complaint is made;
- not be an excluded complaint;
- not otherwise excluded under the scheme rules (other than because of a time limit); and
- be lodged in the 12-month period of 1 July 2019 to 30 June 2020.

While legacy complaints about superannuation death benefits are excluded, AFCA can consider other superannuation legacy complaints, including those relating to total and permanent disability or other insurance claims, fees and other services.

AFCA's Operational Guidelines Legacy Addendum gives further guidance on how AFCA will deal with legacy complaints, including how it will consider relevant laws, codes, and industry practices.

QMV recommends that superannuation trustees assess the risks of increased levels of complaints and matters referred from AFCA. Member service functions should also be informed of the changes in order to adequately inform and service members of their rights in relation to such legacy complaints.



Consumer Data Right

14 June 2019
Consultation

[LINK TO DETAILS](#)

Treasury has released a second draft designation instrument for the application of the Consumer Data Right ("CDR") to the banking sector for consultation.

The second stage of consultation responds to concerns raised in the first stage surrounding derived or value-added data and the carve out of information about the use of a product that meets the test of having been materially enhanced – data which is the result of the application of insight, analysis or transformation of data to significantly enhance its usability and value in comparison to its source material.

Treasury points to its intention that "information whose value has been largely generated by the actions of the data holder will be carved out by the 'materially enhanced' test," but confirms that derived data must be included in the CDR regime (with safeguards protecting access rights that are too broad).

The consultation seeks further examples of data sets that are materially enhanced and those that are not materially enhanced.

QMV recommends that superannuation trustees consider responding to the consultation in relation to identifying superannuation data sets which are materially enhanced. This will become important once the consumer data right is extended to the superannuation system.

TECHNICAL CHANGES AND UPDATES



Super and Retirement Calculators

5 June 2019
Legislative Instrument

[LINK TO DETAILS](#)

ASIC has issued *ASIC Corporations (Amendment) Instrument 2019/514* which amends *ASIC Corporations (Generic Calculators) Instrument 2016/207* to ensure that estimates produced by superannuation and retirement calculators are adjusted for inflation. Trustees have an option to use either:

- the default inflation rate (currently set out in the instrument at 3.2%); or
- an alternative inflation rate, as long as certain disclosure requirements are met.

The default inflation rate will be reviewed and updated annually. The new calculator requirements commence on 5 December 2019. Until then, superannuation and retirement calculators must disclose whether or not estimates take into account changes in cost of living.

QMV recommends that superannuation trustees review any superannuation and retirement calculators to determine that they treat inflation rates in a manner consistent with the legislative requirements.



Supervisory Levies

4 June 2019
Consultation

[LINK TO DETAILS](#)

The Treasury and APRA have issued *Superannuation Supervisory Levy Imposition Determination 2019* on the proposed financial institutions supervisory levies that will apply for the 2019-20 financial year.

For superannuation funds other than small APRA funds, the restricted levy component of the value of assets for 2019/20 is 0.00324% subject to a minimum of \$5,000 and a maximum of \$600,000. The unrestricted component of the 2019/20 levy will be calculated at 0.003557% of assets.

The paper attributes the increase to: the measures 'New and expanded functions' and 'Government Response to the Royal Commission, partly offset by the completion of funding for ASIC's activities related to the Government's 'Improving Outcomes in Financial Services'' package. Each component of the levies is detailed in the paper.

QMV recommends that superannuation trustees ensure that financial forecasts and budgets include adequate provisions for the supervisory levies.



Family Law Adjustment Rate

1 June 2019
Legislative Instrument

[LINK TO DETAILS](#)

The Australian Government Actuary has released the *Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2019* (the Determination).

The interest rate for the adjustment period (the financial year beginning on 1 July 2019) is 0.048.

The Determination also provides the methods for calculating the interest rate for an adjustment period of less than 12 months within the financial year and for 12 months and less than 12 months, respectively, not within the financial year.

QMV recommends that superannuation trustees review the calculation methods and ensure that impacted entitlements made under the Family Law Act 1975 and splitting of benefits are made in accordance with the declared interest rates and methods.



Age Pension Means Testing Calculation Changes

14 June 2019
Legislative Instruments

The *Department of Social Services* has issued several legislative instruments regarding the calculation and means testing of the Aged Pension:

- [Social Security \(Value of Asset-Tested Income Streams \(Lifetime\) Determination 2019\)](#) sets out safeguard methods to calculate the value of an asset-tested income stream for the purpose of means testing.
- [Social Security \(Kind, Extent and Purchase Amount for Asset-Tested Income Streams \(Lifetime\) Determination 2019\)](#) outlines the extent that certain income stream products that contain a lifetime income stream component are to be assessed as an "asset-tested income stream (lifetime)" under the new means testing rules.
- [Social Security Amendment \(Family Law Affected Income Streams\) Principles](#) sets out principles regarding the value of an asset-tested income stream (lifetime) that is a family law affected income stream. The value of an asset-tested income stream (lifetime) is relevant to assessing a person's income and assets for the purposes of the social security income and assets tests.

All instruments go into effect on 1 July.

QMV recommends that Superannuation trustees ensure that any representatives and employees involved in providing retirement planning and financial advice are aware of the changes to the treatment of lifetime income stream products.

GUIDANCE AND POLICY



Info. Security

25 June 2019
Prudential Guidance

[LINK TO DETAILS](#)

APRA has released updated prudential guidance to all APRA-regulated entities regarding managing information security risks, including cyber-crime. Their new cross-industry standard, CPS 234 Information Security, comes into effect 1 July.

APRA has also published a letter responding to submissions on the draft that was released for consultation in March. It is seen as only a "matter of time" until an Australian financial institution suffers a large breach of security, and to be as best prepared as foreseeably possible.

QMV recommends that Superannuation trustees view the letter from APRA and evaluate the updated guidance from APRA wherever relevant within the organisation, and to keep in mind that the guidance is now in effect.



BEAR

24 June 2019
Consultation

[LINK TO DETAILS](#)

APRA has commenced consultation on changes to the BEAR, which is expected to be extended to superannuation trustees during the current term of government.

APRA notified banks of its proposal to implement end-to-end product accountability under the Banking Executive Accountability Regime. Their proposal aims to enhance customer experience and outcomes by addressing recommendation 1.17 of the Hayne Royal Commission.

This recommendation suggests that APRA should determine responsibility for all steps in design, delivery and maintenance of products offered by an ADI subject to the BEAR, and any necessary remediation. This consultation closes on 23 August 2019.

QMV recommends Superannuation Trustees remain informed about the BEAR and could consider organising management responsibilities in a manner consistent with the BEAR obligations.



RSE Licensee ownership

24 June 2019

[LINK TO DETAILS](#)

APRA commenced consultation regarding a draft form and guide for applications to acquire a controlling stake in an RSE licensee.

From 5 July, any party wishing to acquire a stake greater than 15% must apply to APRA for approval.

These proposed new powers are intended to enable APRA to consider the suitability of persons seeking to take a controlling stake in an RSE licensee to ensure the applicant will not impede the RSE licensee in meeting its fiduciary obligations under the SIS Act.

Any feedback regarding this form is due on 5 July 2019.

QMV recommends that Superannuation Trustees view both of these consultations from APRA and provide necessary feedback, especially regarding application forms to own or control an RSE, which is due to come into effect on 5 July.



SuperStream for SMSF's

28 June 2019
Media Release

[LINK TO DETAILS](#)

The Assistant Minister for Superannuation, Financial Services, and Financial Technology extended the deferral of integrating SuperStream and the Superannuation Transaction Network (STN) to SMSF rollovers from 30 November 2019 to 31 March 2021.

The extension to the deferral is attributed to a 2019-20 budget measure to bring electronic release authorities into SuperStream and will ensure that system updates will only need to occur once.

Regulations to give effect to this will be made as soon as practical.

QMV recommends that Superannuation Trustees note the extended deferral date and ensure that current arrangements for transfers between SMSFs and APRA regulated funds remain appropriate during the deferral period.



Crypto Asset Regulation

27 June 2019
Guidance

[LINK TO DETAILS](#)

Global and domestic regulatory bodies have updated their guidance on crypto-asset regulation. ASIC, the global Financial Stability Board, and IOSCO have released guidance focused on the potential systemic risks that such crypto assets could have on the broader financial system, including pension systems.

- ASIC has updated [INFO 225 guidance](#), expanding on previous guidance and information regarding when a crypto-asset will be a financial product. They advise that the status of a crypto asset overseas will not determine its treatment under Australian law.
- IOSCO has issued a consultation process on key risks, issues and regulatory considerations of CTPs (crypto-asset trading platforms). The primary feedback it is seeking is relating to participant access to markets, safeguarding of assets, conflicts of interests, among other issues.
- FSB has released two reports – the [first](#) being an update to the G20 regarding the work of international regulatory bodies. The [second](#) focuses on the effect of decentralisation on financial stability, including benefits and risks. It recommends that regulation should be focused on what objectives it strives to achieve, rather than the specific entity it is looking to regulate.

QMV recommends that superannuation trustees stay up to date on regulatory changes to cryptocurrency.

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

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