

LEGAL & REGULATORY UPDATE

PENSIONS AND SUPERANNUATION

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IN BRIEF

*The growing regulatory focus on **climate chance related financial risks** saw APRA announce that it plans to release climate related financial risk guidance and make ESG related changes to the **Investment Governance Prudential Standard and Guidance**.*

*There was also movement in Parliament, with passage of the **SG Amnesty Bill**, **Stronger Regulators Bill**, and the legislation to facilitate the wind up of **Eligible Rollover Funds**, and legislation to make permanent existing **SFT tax relief** was introduced.*

*We also saw some less than exciting yet important developments in relation to **Direct to APRA access**, and rules made in relation to the **Consumer Data Right**, and tax reporting changes introduced to Parliament. ASIC released its report on **PYSP related disclosures** with some important findings,*

MAJOR UPDATES



APRA Climate Risk Guidance

12 February 2020
Guidance

[LINK TO DETAILS](#)

APRA has published a letter to all regulated institutions, outlining its plans to develop a prudential practice guide focused on **climate-related financial risks**, and assessments on climate change vulnerability.

The guidance will not create new obligations, however will cover areas relevant to the prudent management of climate change financial risks under **CPS 220 (Risk Management)**, aligned with the recommendations of the Financial Stability Board's **Task Force on Climate-related Financial Disclosures (TCFD)**, including aspects of governance, strategy, risk management, metrics and disclosure.

APRA has indicated that it will consult on the draft guidance in mid-2020 and, subject to feedback, will seek to publish final guidance before the end of the year,

APRA has also indicated that entities should be "proactive in taking steps to assess and mitigate climate change financial risks now, and not delay action until further guidance or scenario analysis from APRA is released."

QMV Legal recommends that superannuation trustees review their approach to managing climate related risk (transition and physical) and ensure that they are satisfied that their approach is consistent with their legal obligations.



Recovering Unpaid SG

24 February 2020
Received Assent

[LINK TO DETAILS](#)

The *Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019* passed both houses. The Bill provides a one-off amnesty to **self-correct historical superannuation guarantee (SG) non-compliance**.

The changes will allow employers to claim tax deductions for payments of SG charge or contributions made during the amnesty period to offset SG charge, as well as remove penalties and fees that may otherwise apply in relation to historical SG non-compliance.

It also limits the Commissioner's ability to remit penalties for historical SG non-compliance where an employer fails to disclose information relevant to their historical SG shortfall.

The amendments generally apply from 24 May 2018.

Superannuation trustees will not be directly impacted by this change (other than as employers with SG obligations), however should ensure that member and employer service functions are aware of the reforms should questions arise from members or employers.



Stronger Regulators

7 February 2020
Legislation

[LINK TO DETAILS](#)

The *Financial Sector Reform (Hayne Royal Commission Response – Stronger Regulators (2019 Measures)) Bill 2019* has passed both houses of Parliament and received assent. The Act implements recommendations from the ASIC Enforcement Review Taskforce Report, including reforms to:

- harmonise and enhance ASIC's search warrant powers, including the power for ASIC to apply for a search warrant in circumstances where the contravention can be an indictable offence under the ASIC Act, the SIS Act and the *Corporations Act*;
- strengthen ASIC's licensing powers; and
- extend ASIC's banning powers.

QMV Legal recommends that superannuation trustees review the Bill and consider the impact of the changes to the trustee's compliance and regulatory risk profile.



Eligible Rollover Funds

7 February 2020
Bill Passed House

[LINK TO DETAILS](#)

The *Treasury Laws Amendment (Reuniting More Superannuation) Bill 2020* passed the House of Representatives without amendment. The Bill would amend the *Superannuation Industry (Supervision) Act 1993* (SIS Act), *Retirement Savings Accounts Act 1997* (RSA Act) and *Superannuation (Unclaimed Money and Lost Members) Act 1999* (SUMLM Act) to facilitate the **closure of all eligible rollover funds** by 30 June 2021.

The balance of all accounts less than \$6,000 held by eligible rollover funds on 1 June 2020 are required to be transferred to the ATO by 30 June 2020 and the balance of all remaining accounts transferred to the ATO by 30 June 2021.

Funds will be able to voluntarily report and pay the balance of the account to the ATO from 1 June 2020 up until the day when the statement and payment are due.

Superannuation trustees should commence planning to review the appropriateness (or existence) of their ERF Policy and related references to transfer to an ERF in product disclosure documents, periodic reporting statements, and fund websites.



Investment Governance & ESG Risks

12 February 2020
Guidance

[LINK TO DETAILS](#)

In a letter to all regulated entities, APRA has indicated that it intends to make changes to **SPS 530 Investment Governance**, which includes paragraphs related to **environmental, social and governance (ESG)** investments to incorporate the new developments. APRA also intends to make updates to the related SPG 530 (Investment Governance).

SPG 530 aims to assist a registrable superannuation entity licensee in complying SPS 530 obligations in relation to the formulation and implementation of an investment strategy, including in relation to environmental, social and governance (ESG) considerations.

APRA has indicated that it will consult on specific changes to Prudential Standard SPS 530 Investment Governance and SPG 530 around the middle of the year, in conjunction with other changes to the superannuation prudential framework as part of APRA's response to the **post-implementation review**.

QMV Legal recommends that superannuation trustees note the planned consultation and make the investment committee aware that ESG related changes to the Investment Governance Standard and Guidance are anticipated this year.



Your Super Your Choice

13 February 2020
Legislation

[LINK TO DETAILS](#)

The *Treasury Laws Amendment (Your Superannuation, Your Choice) Bill 2019* was passed by the House without amendment. The Bill seeks to amend the *Superannuation Guarantee (Administration) Act 1992* to enable employees under new workplace determinations or enterprise agreements (after 1 July 2020) to **exercise choice of superannuation fund** for their compulsory employer contributions.

The Bill carves out exceptions for some existing members of defined benefit schemes, where the member benefit would not be affected by employer contributions not being made to the fund (such as where the fund is in surplus, or a maximum benefit has been reached).

QMV Legal recommends that trustees assess the extent of any impact, and the effect of the changes on future member flows and ensure financial modelling accounts for any such changes. Trustees may also consider ensuring that contributing employers affected are aware of the proposed changes.



TECHNICAL CHANGES AND UPDATES



SFT Tax Relief

12 February 2020
Bill Introduced

[LINK TO DETAILS](#)

The *Treasury Laws Amendment (2020 Measures No 1) Bill 2020* has been introduced to Parliament, seeking to **make permanent existing CGT relief** for tax on transferred assets between superannuation funds by way of a successor fund transfer.

Schedule 2 of the Bill provides the 2019/20 budget measure that **removes this possible tax impediment to SFTs** between superannuation funds by permitting the rollover of revenue gains/losses and capital gains/losses.

This Schedule will commence on the first 1 January, April, July or October to occur after the day the Bill receives Royal Assent. This will make the tax relief for merging funds permanent from 1 July 2020.

QMV Legal recommends that superannuation trustees ensure that any consideration of potential merger or successor fund transfers includes the now permanent tax relief on asset transfers.



Consumer Data Right Inquiry

March 2020
Consultation

[LINK TO DETAILS](#)

The Australian Competition and Consumer Commission (ACCC) indicated it will consult on the development of version 2 of the CDR rules early into March. This would continue from the ACCC's consultations in February that were closed on 3 February. The ACCC has also updated the timeline for the implementation and launch of the CDR in the banking sector (Open Banking), deferring the launch of certain aspects from February to July 2020.

Consumers will now be able to direct major banks to share their credit and debit card, deposit account and transaction account data with accredited service providers from 1 July 2020. Mortgage and personal loan data will be able to be shared after 1 November 2020.

QMV Legal recommends that superannuation trustees that have or intend to register as an authorised data recipient remain on the lookout in early-to-mid March for any prompt to provide a response to the ACCC regarding their CDR rules, especially if they had previously made a submission on the last round of submissions related to their consultation paper.



Direct to APRA Updates

6 February 2020
Consultation

[LINK TO DETAILS](#)

APRA has released instructions for entities to update Direct to APRA (D2A) to replace AUSkey with myGovID and Relationship Authorisation Manager (RAM).

All entities who use D2A must ensure that the update is successfully completed before AUSkey is decommissioned at the end of March 2020. Users of the APRA Extranet must also set up their myGovID and ensure they are authorised in RAM. The Extranet login link for myGovID will be available in March 2020.

QMV Legal recommends that all superannuation trustees ensure that appropriate arrangements have been made to update the D2A access arrangements.



FinTech Sandbox

10 February 2020
Update

[LINK TO DETAILS](#)

The *Treasury Laws Amendment (2018 Measures No. 2) Bill 2020* has passed both houses of Parliament and received royal assent. The Bill amends the *Corporations Act 2001* and *National Consumer Credit Protection Act 2009* to allow regulations to provide for exemptions from the Australian Financial Services Licence and Australian Credit Licence requirements for the purposes of testing financial and credit products and services under certain conditions.

The amendments to the existing regulatory sandbox regime are intended to expand the scope and duration that the sandbox can be relied on and includes financial advice.

The expanded scope may see greater opportunities for superannuation Trustees to partner with innovative FinTech providers to provide financial services to members.



Significant Global Entity Taxation

12 November 2019
Consultation

[LINK TO DETAILS](#)

The *Treasury Laws Amendment (2020 Measures No 1) Bill 2020* was introduced to Parliament. The Bill would extend the definition of a Significant Global Entity (SGE) beyond groups headed by listed companies and by private companies required to prepare general purpose financial statements to include members of large business groups headed by trusts and investment entities.

The concept behind SGE is to define a group of entities, interrelated by a control relationship that could enable non-arm's length dealings and therefore be of special interest to tax authorities.

The SGE definition is now also used to determine application of the OECD Country-by-Country reporting, Multinational Anti-Avoidance Law, the Diverted Profits Tax and penalties applying to false or misleading statements, late lodgement or tax schemes.

QMV Legal recommends that trustees ensure that financial reporting aligns with the relevant obligations where the RSE or trustee is now covered by the definition.



GUIDANCE AND POLICY



PYSP Member Communications

12 February 2020
Report Released

[LINK TO DETAILS](#)

ASIC has released findings from a recent review of superannuation trustee's member communications with regards to changes introduced through the Protecting Your Superannuation Package legislation from 2019, highlighting the **challenges in disclosure** of this recent legislation.

After a review of 12 superannuation funds, incorporating six million member accounts, ASIC found that there were "some good member communication", yet saw **consistent problems** with the material under review, and made the suggestion that "trustees are not always sufficiently focused on their members' needs."

Some of the communication material was found to have not **provided sufficient context** for the reforms, or adequately explained what the changes meant for the members; and it was also found that communications used complex language, or promoted an option that may have not necessarily been suited for the member.

QMV Legal recommends that superannuation trustees review their member communications and disclosure, especially with regards to PYSP, and ensure that the appropriate level of information has been given with the correct jargon, to ensure the highest possible standards of communication.



Corporate Bond Market

10 February 2020
Inquiry Commenced

[LINK TO DETAILS](#)

The House of Representatives Committee on Tax and Revenue has commenced an inquiry into the **development of the corporate bond market** in Australia. It was noted by the chair of the committee that the market is "small compared to those of similar countries", and it is one of their objectives to understand why Australian businesses tend to utilise offshore bond markets as opposed to issuing domestic bonds.

The committee will also consider the tax treatment of corporate bonds as well as the *Corporations Act 2001* to determine whether there are any impediments to the development of the retail corporate bond market.

QMV Legal recommends that the investment committee and function of superannuation trustees stay across potential changes to the Australian corporate bond market and assess whether a change in legislation around their regulation, development or taxation creates investment risks or opportunities.

ABOUT QMV LEGAL

QMV Legal is focused on providing pragmatic and expert legal advice which considers both the **nuance of superannuation law** and the commercial and operational objectives of superannuation trustees and providers.

Being **closer to the business** operations and technology of running a superannuation fund provides QMV Legal with a unique insight into the legal issues faced by superannuation funds.

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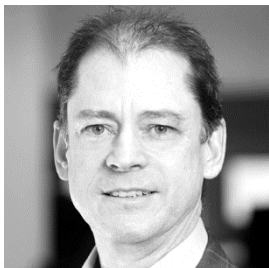
MANAGED INVESTMENTS & ESG

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QMV Legal provides an innovative legal and regulatory **subscription service for superannuation trustees** which includes pro-active, efficient, and client specific legal and regulatory change advice.

CONTACT US

If you have any questions or need assistance, you can contact us directly via the details below:



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