March 2020

QMV LEGAL

LEGAL & REGULATORY UPDATE

PENSIONS AND SUPERANNUATION

INSIDE THIS EDITION

- COVID19 Emergency Measures
- Early Release Customer Verification
- AUSTRAC Compliance Reports
- Regulatory Priorities
- Advice Fees

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IN BRIEF

The past month, and in particular the last week, has seen an unprecedented shift in regulatory focus due to the escalation of the novel ***Coronavirus pandemic*** *and related* ***economic deterioration****. It seems this 'new normal' could last for many months.*

We indicated in our ***Coronavirus Pandemic Regulatory Update*** *last week, that urgent measures had been passed which affect superannuation trustees, but that there may be additional future measures if necessary. Since then, we have indeed seen additional announcements, most notably in relation to the 'JobKeeper' Payment.*

The regulators have provided some space for superannuation trustees to focus on the challenges presented by the pandemic, ***deferring most (but not all) regulatory change consultation*** *which was underway until at least 30 September 2020.*

In this new normal QMV Legal recommends that superannuation trustees maintain the ***focus on tactical responses****, while not losing sight of proposed regulatory changes and continue to asses and provide feedback about those proposals as time permits. It will be very important that superannuation trustees are also ready to resume 'old normal' activities at possibly short notice.*

MAJOR UPDATES

Compassionate Early Access

24 March 2020
Legislation

LINK TO DETAILS

The *Coronavirus Economic Response Package Omnibus Act 2020* has received assent, extending the existing Compassionate Grounds condition of release for financial years 2019-20 and first three months of 2020-21.

Members who are unemployed; have had their role made redundant; are a sole trader and their business was either suspended or there was a reduction in turnover of 20% or more; in receipt of a social security benefit; or have seen a decrease of paid working hours of at least 20% will be eligible to have up to $10,000 of their superannuation benefits released tax-free (not considered assessable income).

The Act also inserts a new operating standard requiring release of an amount in a determination received from the Commissioner about a member as soon as practicable without requiring any additional application from the member.

Superannuation trustees should update their processes and systems to allow for the payment of up to two financial hardship benefits between 21 April and 1 October 2020 and communicate the availability of early release benefits to members. Consideration should also be given to ensuring that there are no other fund rules which would constrain release on such grounds.

ATO Update on Implementation of Early Release

30 March 2020
Guidance

LINK TO DETAILS

The ATO issued CRT Alert 004/2020 to provide clarity on how the COVID-19 early release of super is progressing, and what it will mean for large superannuation funds and their administrators.

On 20 April, the ATO will deploy the application form (which can be accessed either through myGov authentication or for those unable to access online services, a call to the ATO). Funds can expect to start receiving notifications from the ATO from 21 April 2020.

Funds will need to download a file from the ATO via the Bulk Data Exchange (BDE) channel and process the information provided. The government expects funds to process the payments and release the amounts to the individual as soon as possible. The ATO continues to publish design and implementation information related to the early release of superannuation.

The ATO has also published COVID-19 Frequently Asked Questions and Changes impacting the Superannuation Industry.

Superannuation trustees should review the ATO's guidance to engage with the administration function or provider to ensure processes and systems are aligned with ATO process and procedures.

JobKeeper Payment

30 March 2020
Legislation

LINK TO DETAILS

Treasury announced a $130 billion JobKeeper payment to help keep more Australians in jobs and support businesses affected by the significant economic impact caused by COVID-19.

Eligible employers will be paid $1,500 per fortnight per eligible employee. Eligible employees will receive, at a minimum, $1,500 per fortnight, before tax, and employers are able to top-up the payment. Payments will be made to the employer monthly in arrears by the ATO.

It appears that employers may be required to pay superannuation on any additional wage paid above that which is subsidised by the JobKeeper Payment.

Trustees should keep apprised of proposed legislation, particularly the interaction with contractual obligations concerning employer contributions under employment contracts, modern awards, and collective agreements.

Pension Drawdown Flexibility

24 March 2020
Legislation

LINK TO DETAILS

The *Coronavirus Economic Response Package Omnibus Bill 2020* also makes amendments to the *Superannuation Industry (Supervision) Regulations 1994* to provide pensioners with account-based pensions with flexibility.

The amendments adjust their minimum draw down thresholds by 50% in the current and next financial year (as occurred during the global financial crisis) to enable members to avoid mandatory sell down of investments during the period of significant market downturn.

QMV Legal recommends that superannuation trustees engage with administration and technology functions or providers to ensure that systems are updated to facilitate the changes. Trustees may also wish to communicate these changes to members with interests in relevant products, so they can consider whether to adjust their drawdown arrangements.

AUSTRAC Update

27 March 2020
Update

LINK TO DETAILS

AUSTRAC has acknowledged that it is an unprecedented time for the superannuation sector and agreed to work with funds to facilitate a streamlined process for the making of payments under the Coronavirus compassionate grounds early release.

AUSTRAC will introduce a Rule under the *Anti-Money Laundering and Counter-Terrorism Financing Act* (AML/CTF), which will ensure that superannuation funds, where the payment is approved by the ATO and processed through My Gov and ATO online, will not have to conduct additional customer verification.

AUSTRAC has also advised that while Compliance Reports are due to be submitted by 31 March 2020, due to the exceptional circumstances surrounding COVID-19, it will continue to accept 2019 compliance reports until 30 June 2020, without risk of enforcement action.

QMV Legal recommends that superannuation trustees note AUSTRAC's update related to customer verification and ensure processes and procedures reflect the change. Additionally, trustees should note the change of due date for AML/CTF compliance reporting and adjust any necessary priorities in their pipeline.

Social Security Deeming Rates

24 March 2020
Legislation

LINK TO DETAILS

Treasury has amended the social security deeming rates**.** On 12 March, it announced a 0.5 percentage point reduction in both the upper and lower social security deeming rates. It has subsequently announced that it will reduce these rates by another 0.25 percentage points.

As of 1 May 2020, the upper deeming rate will be 2.25 per cent and the lower deeming rate will be 0.25 per cent. The change will benefit around 900,000 income support recipients, including around 565,000 Age Pensioners who will, on average receive around $105 more of the Age Pension in the first full year the reduced rates apply.

QMV Legal recommends that superannuation trustees ensure that any information or financial advice provided in relation to retirement planning (including calculators on websites) is amended to reflect the changes (insofar as they are included in models and advice).

ASIC Regulatory Agenda

24 March 2020
Operations Change

LINK TO DETAILS

ASIC announced that it would focus its regulatory efforts on challenges created by the COVID-19 pandemic until at least 30 September 2020. However, ASIC has maintained a priority on matters where there is the risk of significant consumer harm, serious breaches of the law, risks to market integrity and time-critical matters.

ASIC announced that it would immediately suspend consultation, regulatory reports and reviews, such as the ASIC report on executive remuneration, updated internal dispute resolution guidance and a consultation paper on managed discretionary accounts.

The release of an updated version of *RG 165 (Internal Dispute Resolution)* was expected about now and has now been deferred until at least 30 September.

QMV Legal recommends that superannuation trustees adjust activities focused on existing consultation, and internal dispute resolution changes in particular.

Corporations Act Relief

24 March 2020
Legislation

LINK TO DETAILS

The *Coronavirus Economic Response Package Omnibus Act 2020* also makes amendments to the *Corporations Act 2001* to enable ASIC to provide relief to corporations from certain obligations by way of legislative instrument for up to six months.

The relief is expected to be applied to obligations which might be difficult (or impossible) to comply with under the current pandemic environment. There's no further indication what these obligations may be at this stage, however annual general meeting obligations may be a example of an obligation where relief may be necessary (ASIC has already indicated a "take no action" approach to AGMs).

The Bill also provides a temporary six-month safe harbour from the directors' duty to prevent insolvent trading. To rely on the provision the debt must be incurred:

- in the ordinary course of the company's business (if it is necessary to facilitate the continuation of the business during the period);
- during the six-month period starting on the day the new law commences; and
- before any appointment of an administrator or liquidator of the company during the temporary safe harbour application period.

QMV Legal recommends that trustees identify any obligations which they may not be able to comply with due to the pandemic and engage with ASIC early to discuss relief. Trustees should also monitor any relief granted for the purposes of breach reporting and regulatory engagement. Additionally, any reliance on the insolvency safe harbour should be considered carefully, considering other directors' duties and the continuing obligations post-safe harbour.

APRA Regulatory Agenda

24 March 2020
Operations Change

LINK TO DETAILS

The Australian Prudential Regulation Authority (APRA) has announced that it has suspended most of its planned policy and supervision initiatives in response to the impact of the COVID-19 pandemic.

The refocus is intended to enable superannuation trustees (and other regulated entities) to dedicate time and resources to maintaining their operations and supporting members.

All substantive public consultations and actions to finalise revisions to the prudential framework that are currently underway or upcoming, including consultations on prudential and reporting standards have been deferred until at least 30 September. This will include APRA's announced release of updated guidance on the sole purpose test, changes to the insurance in superannuation prudential standard, and ESG and climate related changes to the investment governance prudential standard. The APRA Data and reporting standard changes have also been put on hold.

QMV Legal recommends that superannuation trustees note the shift in regulatory priorities and focus resources dedicated to these regulatory changes to other activities in the short term.

AFCA Arrangements

24 March 2020
Operations Change

LINK TO DETAILS

The Australian Financial Complaints Authority (AFCA) has announced that it would modify its approach to dispute resolution to consider all regulatory and legislative changes announced as part of Australia's COVID-19 response.

AFCA has noted that complaints about COVID-19 will be prioritised and fast-tracked to ensure those impacted have their issues resolved as quickly as possible, and will take into account the circumstances and context in which lenders and other financial firms are currently operating when considering complaints (such as alternate staffing arrangements) and may not be in a position to quickly act on requests for information.

QMV Legal recommends that superannuation trustees plan for increased volumes in applications for benefit payments, member service demands, and the likelihood of related increases in the number of complaints involving AFCA. Resourcing arrangements might be reorganised to support such increased activity.

Improving Flexibility for Older Australians

5 March 2020
Consultation

LINK TO DETAILS

Treasury released the *Treasury Laws Amendment Bill 2020: Improving Flexibility for Older Australian* for consultation. The Bill gives effect to the measure first announced in the 2019/20 Budget to provide Australians over 65 with greater flexibility in making voluntary superannuation contributions (concessional and non-concessional) from 1 July 2020.

The Bill proposes to achieve this objective through three changes:

- The age at which the work test starts to apply for voluntary concessional and non-concessional superannuation contributions is increased from 65 to 67;
- the cut-off age for spouse contributions is increased from 69 to 74; and
- individuals aged 65 and 66 can make up to three years of non-concessional superannuation contributions under the bring-forward rule.

Once law, the Bill is proposed to apply to non-concessional contributions made on or after 1 July 2020.

QMV Legal recommends superannuation trustees keep apprised of the Bill's progress and ensure in-house financial advisers are aware of any changes. Trustees should also consider whether any changes are necessary to administration rules relating to acceptance of contributions.

2020/21 Budget

20 March 2020
Deferral

LINK TO DETAILS

Government has deferred the 2020/21 budget until 6 October 2020 due to the economic uncertainty brought on by COVID-19. The situation makes it difficult to formulate reliable economic and fiscal estimates over the next few months.

The deferral will ensure that the 2020-21 Budget can set out the path for economic recovery. The Government in the meantime will supply bills in Parliament to ensure the continuity of government in 2020-21 and lift the debt ceiling from $600 billion to $850 billion to ensure capacity to deal with ongoing economic impact of coronavirus.

In line with the decision to postpone the Budget, the next Intergenerational Report will be released in mid-2021 to ensure there is adequate time to produce long term projections that are based on robust budget estimates.

No action required by superannuation trustees, however this will postpone new measures or packages announced regarding superannuation until October.

CDR Future Direction

6 March 2020
Consultation

LINK TO DETAILS

Treasury released an Issues Paper for consultation in its *Inquiry into Future Directions for the Consumer Data Right*. The inquiry looks at how the CDR could be enhanced and leveraged to boost innovation and competition, and support the ongoing creation of an efficient and secure digital economy.

A primary aspect of this inquiry involves how it could be expanded to include "write" access, which could have implications in any future iterations of *Open Banking* or *Open Super*. The inquiry is forward-looking, focusing on the future purpose, use and vision for the CDR, rather than its current implementation or the sectors to which it should next be applied.

Submissions close on 23 April 2020 and a report is due by September 2020.

> *QMV Legal recommends that superannuation trustees that have or intend to register as an authorised data recipient, or otherwise interested in the potential of Open Super, consider providing a response to the Treasury, especially if they have made a previous response.*

SG Amnesty

10 March 2020
Legislation

LINK TO DETAILS

The *Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019* providing an amnesty to encourage employers to correct SG non-compliance received royal assent.

The Act achieves its objective by allowing employers to claim tax deductions for payments of SG charge or contributions made during the amnesty period to offset SG charge, as well as reducing penalties and fees that may otherwise apply in relation to historical SG non-compliance to nil.

Employers must take specific actions within a prescribed period to qualify for the amnesty. The law requires that those employers wanting to participate in the amnesty apply by 7 September 2020.

The ATO recognised that while the law does not allow it to vary the due date for lodgement of the amnesty application, in light of changes in circumstances as a result of COVID-19, it will work with employers to establish a payment plan that is flexible; where an employer is unable to maintain payments, disqualification will only apply to unpaid quarters and circumstances will be taken into account in deciding whether a Part 7 penalty should be applies (which may result in the penalty being reduced to nil); and will amend returns as quickly as possible so that any refunds can be paid

> *QMV Legal recommends that superannuation trustees consider engaging with their employer sponsors to ensure that they are aware of the amnesty and the ATO's further information in light of COVID-19.*

Advice Fees

10 March 2020
Consultation

LINK TO DETAILS

ASIC issued Consultation Paper 329 *Implementing Royal Commission recommendations: Advice fee consents and independence disclosure*. The paper seeks feedback on:

- draft legislative instruments that deal with advice fee consents and independence disclosure; and
- a proposal to issue more guidance in Regulatory Guide 245 *Fee Disclosure Statements* (RG 245) to help industry meet obligations around ongoing fee arrangements, including renewal notices and fee disclosure statements.

ASIC's draft legislative instruments set out requirements proposed for:

- written consent to deduct, or to arrange to deduct, fees from a client account as part of an ongoing fee arrangement (Recommendation 2.1). See *ASIC Corporations (Consent to Deductions-Ongoing Fee Arrangements) Instrument 2020/XX;*
- written consent to deduct fees from a superannuation account under an arrangement that is not an ongoing fee arrangement (Recommendation 3.3). See *ASIC Superannuation (Consent to Pass on Costs of Providing Advice) Instrument 2020/XX*; and
- written statement that discloses advice providers' lack of independence (Recommendation 2.2). See *ASIC Corporations (Disclosure of Lack of Independence) Instrument 2020/XX*.

Comments close on 7 April 2020, albeit suspension of other consultations.

QMV Legal recommends that superannuation trustees review the Consultation Paper and proposed changes to advice arrangements and provide feedback.

TECHNICAL CHANGES AND UPDATES

APRA Data Project Suspended

24 March 2020
Update

LINK TO DETAILS

After releasing a revised implementation timeline earlier this month, APRA announced the temporary suspension of its program to replace APRA's Direct to APRA (D2A) data collection tool with APRA Connect.

APRA expects this temporary hold will last at least six months and delay all APRA Connect go live dates by at least this timeframe. As the external environment stabilises, APRA will advise entities when the project will restart. Entities will continue to use Direct to APRA and other current reporting channels.

However, the D2A update for myGovID, with AUSkey decommissioning will proceed. In order for entities to continue to access D2A beyond this time, they will be required to obtain a myGovID and be authorised to act on behalf of their entity in Relationship Authorisation Manager.

QMV Legal recommends that superannuation trustees remain cognisant of APRA's implementation and take note of the temporary hold.

Rates and Thresholds

13 March 2020
Legislative Instrument

LINK TO DETAILS

The ATO published key superannuation rates and thresholds for the 2020/21 year. The rates and thresholds include:

- Contributions caps – the concessional contributions cap is $25,000 and the non-concessional contributions cap is $100,000;
- Transfer balance cap is $1.6m;
- Defined Benefit income cap is $100,000;
- Division 293 tax threshold is $250,000;
- Low-rate cap is $215,000 and untaxed plan cap amount is $1.565m;
- Employment termination payments cap for life benefit termination payments and death benefit termination payments is $215,000; and
- Maximum super contribution base is $57,090 per quarter.

QMV Legal recommends that superannuation trustees ensure administration and advice operations are aware of the changes to the rates and thresholds.

DASP

16 March 2020
Guidance

LINK TO DETAILS

The ATO updated the steps for funds and administrators to follow for establishing access to the departing Australia payments online system.

A new search function has been built to assist funds to search for DASP applications. The ATO provides instructions on accessing the search function, which can be done by name, date of birth, application date and TFN.

The ATO recommends funds check the DASP online system regularly to see if claims are waiting to be actioned. Once a claim has been received – including any additional supporting evidence – it must be processed in 28 days.

Also, as of 16 March, accessing the DASP online system has changed, AUSkey is no longer a log-in option but rather myGovID and RAM must be used.

QMV Legal recommends that superannuation trustees review the new search function and ensure that any required changes to business processes be communicated with the administrator where applicable.

FinTech & RegTech

27 March 2020
Senate Inquiry

LINK TO DETAILS

The Senate has established the Select Committee on Financial Technology (FinTech) and Regulatory Technology (RegTech) to undertake a comprehensive inquiry into the current state of Australia's FinTech and RegTech industries and investigate opportunities for government to promote effective and sustainable growth in these sectors in order to enhance Australia's economic competitiveness.

The Committee finished its last round of public hearings in February, before the COVID-19 pandemic dramatically changed Australia's financial and economic environment. The Committee expects these changes will have a significant impact on FinTech and RegTech sectors and will not continue with its previous timeline.

The Committee has instead re-opened the inquiry submission process to hear what support is necessary in the short, medium and long term, including post-recovery, focusing on solutions that can be delivered swiftly by government and the private sector. Submission are open until 10 April 2020.

QMV Legal recommends that superannuation trustees consider a written submission detailing the impacts, barriers and opportunities they see as related to superannuation, noting that submissions do not need to be lengthy.

Family Law Splits

13 March 2020
Report

LINK TO DETAILS

The Senate Standing Committee on Legal and Constitutional Affairs has recommended the *Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Bill 2019* be:

- amended so that it is not the date upon which an application is filed which determines if superannuation of de facto couples can be split, but instead the date upon which the relevant final order is made;
- amended to expressly provide that the provisions do not apply to separating de facto couples who have already made a binding financial agreement pursuant to Division 3 of Part 5A of the *Family Court Act 1997* (WA), and where that agreement has not otherwise been set aside; and
- passed by the Senate, subject to the preceding recommendations.

The Bill gives effect to a referral power from Western Australia to the Commonwealth in respect of superannuation matters in family law proceedings for separating de facto couples in Western Australia. It will allow de facto couples in Western Australia to split their superannuation interests as part of their property settlements. All other property splitting for separated Western Australian de facto couples will continue to be dealt with under Western Australian law.

QMV Legal recommends that superannuation trustees remain apprised of the Bill's status to ensure any processes and procedures associated with family splits are amended to reflect the change in law.

GUIDANCE AND POLICY

Joint Letter from ASIC & APRA

1 April 2020
Guidance

LINK TO DETAILS

ASIC and APRA issued a joint letter to superannuation trustees providing guidance on managing financial and operational challenges associated with COVID-19, while continuing to meet their obligations to look after members' best interests. The letter points out that liquidity should be a top priority for trustees; communication with members should occur often, and be clear and accurate; awareness and understanding of life insurance cover is crucial; and vigilance about members' interests and cyber security threats and scams is necessary.

ASIC and APRA have also each published Frequently Asked Questions with more detailed information. Key points from ASIC include:

- The publication of industry level findings form the joint work on trustee's oversight of fees and other changes will be deferred for six months;
- ASIC is considering the timing of portfolio holdings disclosure consistently with ASIC's announced recalibration of its regulatory priorities and any action taken by ASIC will be announced on ASIC's website; and
- At this stage there is no relief from the requirement to hold annual members' meetings with electronic or virtual annual members' meetings are expressly contemplated in section 29P and the Explanatory Memorandum to the Bill.

Key points from APRA include:

- Trustees should be working closely with their administration function to identify critical business activities, which in APRA's view include day-to-day payment of benefits, processing rollover requests, investment switches and early release payments;
- Data collection, as part of the Superannuation Data Transformation period is deferred until September 2021;
- No relief from SPS 515 Strategic Planning and Member Outcomes compliance;
- Trustees should endeavour to meet their data reporting requirements as normal; and
- The commencement of the thematic activity relating to outsourcing and conflicts management will be postponed until Q4 2020.

QMV Legal recommends superannuation trustees review ASIC and APRA's communications and ensure identified areas affected by COVID-19 are prioritised.

APRA Heatmap

19 March 2020
Guidance

LINK TO DETAILS

APRA released a new set of frequently asked questions to announce plans to update the MySuper Product Heatmap, which APRA confirmed will occur in June 2020. The update will comprise of updated concise and expanded fees and costs metrics included in the December 2019 heatmap. The purpose of the update is to show actions taken by trustees to address areas of underperformance.

To ensure that updated fees and costs are reflected in the heatmap, ad-hoc submissions of Reporting Standard SRS 703.0 Fees Disclosed must be received by APRA by 5pm on 29 May 2020 via Direct to APRA. Any updates submitted after this date will be reflected in the next iteration of the heatmap, planned for release in December 2020.

Resubmitted historical data changes to Strategic Asset Allocation in Reporting Standard SRS 533.0 Asset Allocation and investment performance in Reporting Standard SRS 702.0 Investment Performance will also be reflected in the next iteration of the heatmap.

QMV Legal recommends that superannuation trustees review APRA's FAQ's and ensure any updated fee and cost information is submitted by the deadline.

Your Super Your Choice

20 March 2020
Senate Report

LINK TO DETAILS

The Senate Economics Legislation Committee released its report, recommending that the *Treasury Laws Amendment (Your Superannuation, Your Choice) Bill 2019* be passed. 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.

In addition to its recommendation that the Bill be passed, the Committee recommended that a review is conducted into the effect of the legislation on defined benefit schemes two years after its implementation, and that the government consider changes as suggested by submitters to further improve superannuation arrangements.

The committee noted that enterprise agreements can still have default funds for their workers; the bill does not stop employees in a union collaborating to make a collective decision; and defined benefit schemes should remain unaffected by the Bill while recognising that if changes emerge over time they should be reviewed to ascertain if there has been unintended negative consequences.

QMV Legal recommends that superannuation 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.

Salary Sacrifice

26 March 2020
Guidance Note

LINK TO DETAILS

The ATO issued Guidance Note GN 2020/1 for employers applying the super guarantee changes for salary sacrifice arrangement commencing on 1 January 2020, as a result of the *Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Act 2019*.

The note provides guidance and examples related to the changes, including if an employer previously calculated minimum super guarantee on reduced ordinary time earnings or if the employer has been counting employee salary sacrificed amounts as employer contributions.

Calculation of super guarantee relating to sacrificed amounts such as salary sacrifice arrangements for cars, property or expense payments are not affected by the changes.

QMV Legal recommends that superannuation trustees ensure that any business functions and systems involved in contributions management are reviewed to ensure that operational and assurance processes accommodate the changes.

AML/CTF

26 March 2020
Senate Report

LINK TO DETAILS

On 14 November 2019, the Senate referred the provisions of the *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill 2019* to the Legal and Constitutional Affairs Legislation Committee for inquiry and report. The Committee has recommended the Senate pass the Bill.

The Bill reflects the Government's phased approach to reforming the AML/CTF regime, and in particular 'hardening the financial sector' against money-laundering and terrorism financing. Among other things, the Bill aims to implement recommendations in the *Report on the Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and associated rules and regulations*, including expansion of exemptions to the prohibition 'tipping-off' and increasing civil penalties for non-compliance with cross-border movement reporting obligations.

QMV Legal recommends that superannuation trustees remain apprised of the Bill's status to ensure any processes and procedures reflect any change in the law.

ATO Survey

17 March 2020
Survey

LINK TO DETAILS

The ATO is seeking feedback from superannuation fund employees on how it can improve its service to funds.

Questions relate to:

- how well the ATO is assisting funds in administering superannuation;
- how the ATO can improve its partnership with the super industry;
- the amount, frequency, timeliness of ATO communications;
- whether ATO communications meet fund needs and whether it provides progress updates; and
- the ATO's products and services.

QMV Legal recommends for employees of superannuation trustees to complete the ATO's survey.

SMSFs and Property Development

16 March 2020
Bulletin

LINK TO DETAILS

The ATO issued *SMSF Regulator's Bulletin* SMSFRB 2020/1 outlining concerns about SMSFs entering into arrangements, with related or unrelated parties, involving the purchase and development of real property for subsequent disposal and leasing.

While the ATO recognises that property development can be a legitimate investment for SMSFs where it complies with the SIS Act and SIS Regulations, the investments cause concern where they are used inappropriately to divert income into the superannuation environment, or if SMSF assets are used to fund property development ventures in a manner that is inappropriate for and sometimes detrimental to retirement purposes.

The ATO's concerns include whether the arrangement:

- amounts to the SMSF being maintained for a purpose outside those permitted under the sole purpose test;
- includes the provisions of a loan or financial assistance to a member or their relative;
- fails to meet requirements to be exempted from the prohibition on borrowing for a limited recourse borrowing arrangement;
- has contravened the in-house assets rules; and
- has been used to manipulate the members' transfer balance accounts.

QMV Legal recommends SMSF trustees review the ATO's bulletin and any property development arrangements to ensure compliance with legal and regulatory obligations.

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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CONTACT US

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