

CORONAVIRUS PANDEMIC REGULATORY UPDATE

PENSIONS AND SUPERANNUATION

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IN BRIEF

The past few days has seen a prompt shift in regulatory focus due to the escalation of the novel Coronavirus pandemic, and related economic deterioration.

Urgent measures have been passed which affect superannuation trustees, however there may be additional future measures if necessary.

The regulators have provided some space for superannuation trustees to focus on the challenges presented by the pandemic, deferring most regulatory change consultation which was underway until at least 30 September 2020.



Compassionate Early Access

24 March 2020
Legislation

[LINK TO DETAILS](#)

The *Coronavirus Economic Response Package Omnibus Bill 2020* was passed by both houses of Parliament, extending the existing Compassionate Grounds condition of release for financial years 2019-20 and 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), in both FY 2019-20 and 2020-21.

The amendments do not specify any minimum documentation or evidentiary conditions for meeting these requirements. Individuals will self-assess their eligibility to apply for a determination directly to the ATO via MyGov.

The Bill also inserts a new operating standard for regulated superannuation funds and approved deposit funds. This new standard requires funds to release an amount specified in relation to them in a determination they receive from the Commissioner about a member. In these cases, the entity will be required to release the amount 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 now and 1 October 2020. Consideration should also be given to ensuring that there are no other fund rules which would constrain release on such grounds. QMV Legal recommends that trustees communicate the availability of early release benefits to members.



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.



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).



Corporations Act Relief

24 March 2020
Legislation

[LINK TO DETAILS](#)

The *Coronavirus Economic Response Package Omnibus Bill 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 an example of an obligation where relief may be necessary (ASIC has already indicated a "take no action" approach to AGMs).

QMV Legal recommends that superannuation 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.



ASIC Regulatory Agenda

24 March 2020
Announcement

[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.



APRA Regulatory Agenda

24 March 2020
Announcement

[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. While the APRA data and reporting standard changes have also been put on hold, APRA may continue certain data reporting initiatives where critical in meeting its mandate in the current environment.

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



AFCA Arrangements

24 March 2020
Announcement

[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 inability 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.

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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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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