

LEGAL & REGULATORY UPDATE

PENSIONS AND SUPERANNUATION

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IN BRIEF

After last month's major pivot towards the **Coronavirus pandemic relief measures**, we saw superannuation trustees focused on managing the **early release scheme**. The initial policy announcements and legislation have now been supported by technical amendments and guidance from regulators.

There was also further **regulatory relief** in the form of deferral of commencement of new obligations which were to commence in 2020. The additional time to transition to certain aspects of the **Information Security and OTC Derivative Risk Management Prudential Standards** are a welcome relief.

While much of the pre-pandemic legislative agenda is now on hold, there were still developments affecting trustees, including the fast-approaching **LIBOR** phase out and consultation on changes to the **Consumer Data Right Rules**.

Finally, the Parliamentary agenda for May will warrant attention from trustees. There are several superannuation related Bills currently before Parliament, and a (small) possibility that the two **Hayne Royal Commission** related Bills might be introduced.

MAJOR UPDATES



Early Release AML-CTF Rule

15 April 2020
Legislation

[LINK TO DETAILS](#)

AUSTRAC introduced a new AML/CTF Rule via the [Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2020 \(No. 1\)](#) which is intended to help streamline the customer verification process for superannuation funds to make payments to their members under the Coronavirus related early release of superannuation scheme.

The rule provides an exemption to verification obligations where the designated service is provided in response to an application made to the ATO, who is a member or retirement savings account holder, during the period of 15 April 2020 to 24 September 2020; and the provision of the designated service is approved by a determination made by the ATO.

AUSTRAC, however, emphasised that other obligations under the AML/CTF Act remain and provided [Guidance Scenarios](#) to help trustees manage and resolve situations that involve discrepancies in member information and behaviour.

Superannuation trustees should review the information released by AUSTRAC and specifically the Guidance Scenarios to understand the breadth of the exemption and continuing obligations around suspicious matter reporting and data monitoring.



Early Release – Temporary Residents

16 April 2020
Legislation

[LINK TO DETAILS](#)

The [Treasury Laws Amendment \(Release of Superannuation on Compassionate Grounds\) Regulations 2020](#) and [Treasury Laws Amendment \(Release of Superannuation on Compassionate Grounds\) Regulations \(No. 2\) 2020](#) have been made to allow temporary residents access to the COVID-10 early release measure. The latter revises the criteria included in the former to broaden access to the early release provisions for Subclass 457 and Subclass 482 visa holders.

The following conditions apply to temporary residents:

- Student visa holders must have held a student visa for 12 months or more and are unable to meet their immediate living expenses;
- Subclass 457 (Temporary Work (Skilled)) and Subclass 482 (Temporary Skill Shortage) visa holders must be employed and unable to meet their immediate living expenses; and
- All other temporary residents may qualify if they are unable to meet their immediate living expenses.

Temporary residents may make one application before 30 June 2020 for the 2019-20 financial year. This contrasts to the measures available to Australian citizens and permanent residents who may apply for two payments of up to \$10,000 each in 2019-20 and 2020-21.

Superannuation trustees should ensure that modelling for early release benefit payments and liquidity management considers temporary residents. Member communications and services should also cater to temporary residents, highlighting that only one early release payment is allowed and must be applied for in the current financial year.



ATO Update on Implementation of Early Release

April 2020
Guidance

[LINK TO DETAILS](#)

The ATO issued several CRT Alerts to provide clarity on how the COVID-19 early release of super is progressing, and what it means for superannuation funds and their administrators. The CRT Alerts include:

- 011/2020: Providing an electronic lodgement option for First Home Super Saver Scheme, Division 293 and Excess Contributions Release Authority Statements;
- 012/2020: Funds may use the Provision of Details Service (PODS) where it needs to contact a member to meet its obligation of paying the COVID early release of super payment in the 'as soon as practicable' timeframe. Trustees must maintain adequate records to show use of PODS complies with scenarios advised by the ATO;
- 015/2020: No change to ATO notification related to temporary residents. Screenshots of the individual application process provided as well as a document outlining what security controls are within and around the application process.
- 016/2020: all fund/administrator queries in relation to COVID early release queries should be directed to the ATO's new mailbox – FundCCRS@ato.gov.au
- 020/2020: As at the end of 19 April 2020 there was a total of 975,300 registrations of interest.

Superannuation trustees should review the CRT alerts and ensure they are receiving CRT Alerts issued via email as certain attachments, such as the security controls document are not made public.



JobKeeper

14 April 2020
Legislation &
Guidance

[LINK TO DETAILS](#)

The [Coronavirus Economic Response Package \(Payments and Benefits\) Bill 2020](#) and the [Coronavirus Economic Response Package Omnibus \(Measures No. 2\) Bill 2020](#) has been passed by Parliament and received royal assent.

The former creates a framework to support the administration of the JobKeeper scheme, with the Treasurer being able to make rules to provide for payments administered by the Commissioner of Taxation. The latter includes amendments to the *Fair Work Act 2009* around the practical operation of JobKeeper. Treasury also released the [JobKeeper Payment – Information for Employers Fact Sheet](#) which again states that it 'will be up to the employer if they want to pay superannuation on any additional wage paid because of the JobKeeper Payment'.

The fact sheet provides examples of the JobKeeper payment and superannuation guarantee responsibility in different wage scenarios as well as where the employee is stood down without pay. However, the planned release of amendments to the *Superannuation Guarantee (Administration) Regulations* which is expected to make changes to the calculation of the SG Charge Amount remains outstanding.

QMV Legal recommends that trustees of employer-sponsored funds review contractual and similar arrangements with employer sponsors to ensure that contribution obligations related to the JobKeeper payment are understood upon the release of the amendments to the regulations. Consideration should also be given to ensuring the minimum requisite benefit calculations for defined benefits are adjusted in accordance with changes to the SG Charge Amount calculation.



Financial Advice Relief

14 April 2020
Legislative
Instrument

[LINK TO DETAILS](#)

ASIC registered [ASIC Corporations \(COVID-19—Advice-related Relief\) Instrument 2020/355](#) which includes three temporary relief measures to assist the provision of affordable and timely advice during the COVID-19 pandemic.

It issued a temporary no-action position for superannuation trustees to expand the scope of personal advice that may be provided by, or on behalf of the trustee as intra-fund advice; replaced the 5 business day *Statement of Advice* requirement with up to 30 business days; and permitted registered tax agents to give advice to existing clients about early access to superannuation without needing to hold an AFS Licence.

The relief is temporary and subject to conditions, including the requirement that a record of advice is provided, the advice fee is capped at \$300 and the client approached the advice provider for advice and the advice provider determined that the client is entitled to the early release payment.

ASIC noted it will conduct surveillance activities to monitor the advice provided to ensure advisers, registered tax agents and superannuation trustees are acting in the interests of clients and members. ASIC will provide 30 days' notice to the industry before revoking the Instrument with the no-action position related to early release expiring when applications for early release can no longer be made. ASIC also issued [FAQs on its temporary relief measures](#).

Superannuation trustees should consider reviewing financial advice activities, business rules and conversation guides to ensure compliance with the temporary relief. Member service functions involved in providing general advice may warrant close attention to ensure appropriate advice is provided.



TECHNICAL CHANGES AND UPDATES



Unclaimed Super Deferral

3 April 2020
Announcement

[LINK TO DETAILS](#)

The ATO issued [CRT Alert 008/2020](#) advising that it will write to trustees to grant a deferral of the scheduled statement day and payment for 31 December unclaimed money day accounts. The deferral will defer the 30 April due date to 31 October 2020.

While the deferral extends the period within which USM accounts can be reported and paid, any fund wanting to continue with their USM reporting as planned can do so.

The ATO is providing this deferral so funds can focus on assisting their members. It will also avoid potential confusion or complexity for individuals who may be looking to release amounts from their super accounts under coronavirus early release of super measure that may have been paid to the ATO.

Superannuation trustees should review priorities and determine the effects the deferral may have on BAU or automatic data processes. Trustees should work with third-party services providers to ensure any change in processes or business rules is documented and executed appropriately and consider their duty to act in members' best interests when deferring payment.



APRA Prudential and Reporting Standards

21 April 2020
Announcement

[LINK TO DETAILS](#)

APRA announced commencement dates for prudential and reporting standards that have been finalised but have not come into effect fully. It follows last month's announcement that APRA was [suspending the majority of its planned policy and supervision initiatives](#) in response to COVID-19. At the time, APRA foreshadowed it would also consider adjusting implementation dates for policy initiatives that had been finalised but not yet commenced. The relevant affected standards include:

- CPS 226 Margining and Risk Mitigation for Non-Centrally Cleared Derivatives (phase-in of initial margin requirements) moved from 1 September 2020, 2021 to 1 September 2021,2022; and
- CPS 234 Information Security (third-party arrangements transition provision) six-month extension from 1 July 2020 to 1 January 2021 available on a case-by-case basis. Entities seeking an extension must advise APRA of the nature of their third-party arrangements, and how they are monitoring the risks associated with these arrangements.

Additionally, APRA's work on product responsibility under the *Banking Executive Accountability Regime* has now been subsumed into its work on the *Financial Accountability Regime* (FAR). APRA intends to release further information on product responsibility when the Government consults on the exposure draft legislation and the implementation timeframe for the FAR.

Superannuation trustees should pay particular attention to their implementation of CPS 234 and where required seek an extension from APRA in a timely manner.



AFCA Extension

16 April 2020
Guidance

[LINK TO DETAILS](#)

Effective 16 April 2020 AFCA gave consumers and financial firms (including superannuation trustees) a temporary nine-day extension to respond to complaints due to the COVID-19 pandemic. The extension applies to all complaints, including those relating to financial difficulty and is intended to be in place for up to six months.

This means that the 21-day response time for financial firms is now extended to 30 days when AFCA notifies them of a complaint lodgement. The extension allows firms additional time to resolve disputes with their customers/members without the need to come to AFCA for external dispute resolution.

AFCA is also providing a standard, a flat 21-day timeframe to provide an initial response once the dispute reaches the case management stage.

Superannuation trustees should review complaint handling procedures and processes to account for the extension and utilise the time where possible work with members to constructive and reasonably resolve their complaints.



Parliamentary Agenda

24 April 2020
Guidance

[LINK TO DETAILS](#)

The Prime Minister announced a trial week of Parliament in May and that they would be returning to the normal business of Parliament, i.e. not coming together to consider necessarily COVID-19 related measure. No further detail on the agenda is available at this stage.

The following superannuation-related bills remain before Parliament:

- [Treasury Laws Amendment \(2020 Measures No.1\) Bill 2020](#)
- [Treasury Laws Amendment \(Reuniting More Superannuation\) Bill 2020](#)
- [Treasury Laws Amendment \(Your Superannuation, Your Choice\) Bill 2019](#)
- [Treasury Laws Amendment \(2019 Measures No.3\) Bill 2019](#)
- [Family Law Amendment \(Western Australia De Facto Superannuation Splitting and Bankruptcy\) Bill 2019](#)

Superannuation trustees should remain apprised of the status of these bills and any implications of their passage on the fund. There is also a possibility that the two Hayne Royal Commission related Bills released in exposure draft form earlier this year could be introduced.



ASIC Calculators

17 April 2020
Guidance

[LINK TO DETAILS](#)

ASIC announced it would be simplifying the superannuation and retirement planner calculators to use a single set of assumptions, while undertaking a scheduled review of assumptions. The default assumptions in the calculator are based on [Treasury's long-term retirement income models](#).

ASIC has however recommended that trustees rely on [ASIC Corporations \(Generic Calculators\) Instrument 2016/207](#) as the relevant instrument and ensure that where they suggest members access a generic calculator to calculate the impact of accessing the COVID-19 early release of superannuation scheme on the member's own retirement balance, the calculator should operate consistently with the instrument.

Superannuation trustees should review any retirement income projection calculators used on the fund website or other means remain compliant with the mandatory calculation assumptions requirements.



Tax Return Lodgement

24 April 2020
Guidance

[LINK TO DETAILS](#)

The ATO has deferred lodgement and payments:

- Company 2018–19 income tax returns due on 15 May 2020, which are now due by 5 June 2020
- SMSF 2018–19 annual returns due on 15 May 2020 and 5 June 2020, which are now due by 30 June 2020.

The 2018/19 income tax returns for individuals, partnerships, companies and trusts can be lodged by 5 June 2020, with payments due by the same date.

The lodgement and payment of the 2019/20 fringe benefits tax annual return has also been automatically deferred to 25 June 2020.

The clients affected by the recent bushfires will also have their due dates aligned with the same due dates as the COVID-19 deferrals.

QMV Legal recommends that the finance and accounting function of superannuation fund trustees is aware of the revised due dates, as may be relevant for any returns planned to be lodged.



CDR Exemptions

24 April 2020
Guidance

[LINK TO DETAILS](#)

Three-month exemptions until 1 October have been granted to banks required to share product reference data by 1 July 2020, due to the impact of the COVID-19 pandemic. The temporary exceptions apply to non-major ADIs and extend to non-primary brand products offered by the major banks.

A revised draft of the Consumer Data Right Rules was also published for consultation with proposed amendments including:

- clarifications on the types of accounts in scope for sharing consumer banking data;
- new rules on the function of the Accreditation Register and Registrar;
- rules relating to the use of the Consumer Data Right logo.

The proposed amendments following this consultation will come into effect from July 2020.

Superannuation trustees that have or intend to register as an authorised data recipient, or otherwise interested in the potential of Open Super, should consider providing a response to the consultation.



Government Co-contributions

21 March 2020
Legislation

[LINK TO DETAILS](#)

The [Legislation \(Deferral of Sunsetting – Superannuation \(Government Co-contribution Low Income Earners\) Regulations\) Certificate 2020](#) was made, deferring the sunsetting of the *Superannuation (Government Co-contribution for Low Income Earners) Regulations 2004* to 1 April 2022.

The Regulations support the general administration of government co-contributions, including prescribing information that must be given to the Commissioner of Taxation, and information the Commissioner of Taxation must give in relation to government co-contributions which are paid, underpaid or overpaid.

Superannuation trustees should be aware that there will not be a change to government co-contribution processes for another two years, however, note that the government is working on a substitution instrument that will be proposed to replace the regulations.



GUIDANCE AND POLICY



AFCA Factsheet

21 April 2020
Guidance

[LINK TO DETAILS](#)

AFCA released a new factsheet about income protection benefits in super to answer consumers' frequently asked questions. The factsheet responds, in part, to member queries around the ability to access income protection benefits due to loss of work because of the COVID-19 pandemic.

The factsheet defines income protection benefits and directs members to their benefit statement for pertinent information around cover, while noting that the amount of the benefit may be less than the amount shown in the benefit statement.

It also details that an income protection benefit is not the same as an unemployment benefit and unless the member is not working due to an illness or injury, they will not be eligible for income protection benefits.

Superannuation trustees should review AFCA's factsheet, and make available to the member service and complaint handling function.



ASIC Letter to Life Insurers

27 April 2020
Guidance

[LINK TO DETAILS](#)

ASIC wrote to directors of life insurance companies about its expectations related to responses to the COVID-19 pandemic. ASIC's overarching expectation is that insurers consider their conduct in light of the current circumstances and to act in a fair, professional manner that is in line with the duty of utmost good faith. ASIC additionally listed expectations related to:

- Code commitments – standing by the commitments made in the Life Insurance Code of Practice;
- Flexibility in dealing with consumers - going beyond the hardship provisions of the Code and reviewing options for premium 'holidays' or deferrals for consumers who are no longer able to pay premiums due to reduced income;
- Handling claims and complaints – flexibility in treatment of consumers whose personal/working conditions have changed as a result of COVID and working closely with superannuation trustees to arrive at fair outcomes for member making insurance claims;
- Communications – ensure trustees understand how members' insurance may be affected by economic conditions and help trustees communicate effects to members in accurate and balanced manner;
- Data on COVID claims – no intention to seek data on claims connected with COVID over the coming months, it does envisage seeking data as the operational impact of the pandemic subsides.

Superannuation trustees should remain cognizant of the expectations on life insurers and engage with insurers in a timely manner to ensure all pertinent information is communicated to members.



APRA FAQ

16 April 2020
Guidance

[LINK TO DETAILS](#)

APRA updated its Frequently Asked Questions – Superannuation trustees' response to COVID-19 with two new FAQs (11 and 12) relating to the temporary early release of superannuation benefits.

APRA advises that it expects:

- Trustees, in complying with the requirement to pay the benefit 'as soon as practicable' and where the automated checking has not identified a red flag, payment be made within five business days of receipt of a determination from the ATO;
- In exceptional circumstances – such as where an automated checking has identified a red flag and additional fraud or other verification steps are required, or where the payment is being made from interests held in defined benefit funds, the process for making payment may take longer;
- In circumstances where an RSE licensee is able to satisfactorily demonstrate to APRA that it has followed the approach set out in these FAQs, APRA would be unlikely to take action against an RSE licensee should a fraudulent payment/s occur.

APRA also recognises that the identified timeframes may extend slightly where there is a high volume of applications at any particular time.

Superannuation trustees should monitor the timeframes required to make payment and ensure adequate oversight over automated checking procedures and the timely identification of potential fraud risks.



ASIC Priorities Update

14 April 2020
Guidance

[LINK TO DETAILS](#)

ASIC had previously stated it would temporarily change its regulatory work and priorities to allow it and regulated entities to focus on the impact of COVID-19. Subsequent updates related to superannuation include:

- Intra-fund advice – Temporary no-action letter to trustees providing personal advice to members about early access to super;
- Portfolio Holdings Disclosure – first reporting date will be deferred;
- Annual member meetings – no intention to provide relief at this time;
- Insurance in super – work will continue as capacity allows, but publication of any report will be deferred until further notice;
- Trustee oversight of advice fee deductions – six-month deferral of public communication of the industry-level findings;
- Fees and costs disclosure (RG 97) – continued monitoring and deferral of the review to align with the timing of the implementation of the revised fees and costs disclosure requirements;
- Commencement of fee and costs disclosure requirements – considering amendment to the transitional arrangements for PDSs to allow entities to come into the new disclosure regime from 30 September 2020 and requiring any PDS given after 30 September 2022 to comply with the new disclosure regime; and
- Platform fees consultation – development of proposals will continue; however, public consultation is deferred.

Superannuation trustees should remain apprised of ASIC's priorities and ensure preparedness around the implementation of revised RG 97 for periodic statements and product disclosure.



Internal Audit

1 April 2020
Guidance

[LINK TO DETAILS](#)

The Institute of Internal Auditors – Australia (IIA-Australia) released an exposure draft *Internal Audit Better Practice Guide for Financial Services: Principles and Recommendations*, recommending guidance for the industry following recommendations from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. IIA-Australia reviewed the lessons from the banking scandals in the UK in 2013, the report by the UK Parliamentary Standards Commission and used the resulting UK Chartered Institute of Internal Auditors' *Effective Internal Audit in the Financial Services code* as a model.

The draft guide sets out six principles and thirty-one specific recommendations intended to give effect to the identified principles. The guide recognises that entities may choose to adopt all or some of the recommendations based on factors such as size, complexity, history and corporate culture.

Appendices to the guide include guidance on how to adopt appropriate methodologies for auditing culture in practice; an overview and explanation of various internal audit operating models utilised across organisations in Australia; and an overview of the Three Lines of Defence model of the components of effective organisation risk management.

Superannuation trustees, specifically risk and compliance functions across the trustee office, should review the guide and consider contributing practical insights during the consultation period.



ASIC FAQ

16 April 2020
Guidance

[LINK TO DETAILS](#)

ASIC updated its COVID-19 Information for Superannuation Trustees – Frequently Asked Questions.

ASIC updated guidance includes:

- A package of measures has been announced to allow greater access to advice through superannuation as a result of COVID-19, including a temporary no-action position allowing the provision of expanded intra-fund advice;
- Communications to members relating to the impact of the early release scheme on retirement balances should be clear, accurate, balanced and must not mislead or deceive. Where communications use projections or estimates trustees can minimise the risk of making misleading statements and clearly disclose the assumptions and variables used in the modelling and that figures are merely estimates;
- ASIC will be amending ASIC Class Order [CO 14/443] to extend relief from portfolio holdings disclosure obligations; and
- ASIC may grant exemptions from or modifications to the law in certain situations. You can apply to ASIC for relief from the requirements in the Corporations Act 2001 (Corporations Act) or SIS Act, where ASIC has the relevant exemption and modification powers.

Superannuation trustees should pay special attention to member communications to ensure compliance with their obligations and consider the impact of the pandemic on ability to comply with the law sooner rather than later.



APRA Early Release Data Collection

21 April 2020 Update

[LINK TO DETAILS](#)

APRA launched a new data collection project to assess the progress and impact of the Government's temporary early release of superannuation scheme.

Trustees must complete and submit the new Early Release Initiative (ERI) data collection form weekly (until further notice) with the first ERI due on 29 April for information as at 26 April 2020. The reporting is intended to gather a range of information, including number and value as well as the processing time for early release payments.

A template along with frequently asked questions and a worked example is included on APRA's website. Key takeaways from APRA's FAQ include that APRA will provide further guidance on the reporting of ERI payments on existing standards; handling of returned payments is beyond the scope of the collection and these payments do not need to be additionally reported on after the initial payment has been attempted; and additional detail related to the terms used in the ERI.

APRA uses this data to publish statistics at an industry and fund level.

Superannuation trustees should review APRA's template and FAQ and evaluate adequacy of data insights to ensure compliance with reporting requirements.



LIBOR Transition

29 April 2020 Update

[LINK TO DETAILS](#)

ASIC published *Preparation for LIBOR transition 'Dear CEO' letter feedback*. In May 2019, ASIC wrote to the CEOs of selected major Australian financial institutions – supported by APRA and the Reserve Bank of Australia (RBA) – requesting information to better understand how these institutions are preparing for the end of LIBOR. Responses indicated:

- The overall impact of LIBOR in Australia is substantial. The aggregate notional LIBOR exposure of respondents is approximately A\$10 trillion, with 40% of that expected to mature after the end of 2021 (when the continuation of LIBOR will no longer be supported by the UK Financial Conduct Authority).
- Due to liquidity concerns in alternative reference rates (ARRs), entities are continuing to write LIBOR-linked contracts.

ASIC warns that given that LIBOR will not be supported beyond 2021, and the scale of work involved in transitioning to alternative benchmarks, prompt action is imperative. If, by the end of 2021, institutions have not transitioned to alternative reference rates or put robust fall-back provisions in place for legacy contracts, significant reputational, operational and legal risks to financial institutions could be realised, risking disruptions in financial markets.

The publication also provides a list of examples of what APRA and ASIC consider to be standards of 'best practice' for prudential and conduct risk mitigation measures.

Superannuation trustees should ensure they are aware of any potential impacts of the transition away from LIBOR to fund operations and investments, particularly around legacy contracts pertaining to infrastructure. A review of existing contracts and templates is recommended to ensure that the transition from LIBOR rates occurs smoothly.

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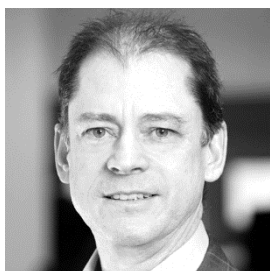
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If you have any questions or need assistance, you can contact us directly via the details below:



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