May 2020

QMV LEGAL

LEGAL & REGULATORY UPDATE

PENSIONS AND SUPERANNUATION

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IN BRIEF

The superannuation regulatory change agenda for the remainder of 2020 is becoming a little clearer, with revised timelines for planned reforms being formalised.

*The **Retirement Income Framework** (including the Retirement Income Covenant), **Hayne Royal Commission Bills**, and **Financial Accountability Regime** have all been shuffled back to provide superannuation trustees with space to manage the coronavirus related early release scheme.*

*There were also plenty of important **early release scheme** related developments and guidance, particularly concerning administration and identity verification.*

*We have also seen non pandemic related measures come back on to the agenda with the **More Flexible Superannuation Bill** being introduced to Parliament with a 1 July commencement date and extensions being made to the **FinTech sandbox**.*

MAJOR UPDATES

Parliamentary Agenda & Sittings

14 May 2020 Announcement

LINK TO DETAILS

Following the mid-May trial of Parliament in a pandemic, the Government has revised the sittings agenda to include seven additional sitting days for both Houses in the Winter sitting (between 10-18 June), before returning for the Spring sitting on 4 August.

The following superannuation-related bills remain before Parliament:

- *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*
- *Treasury Laws Amendment (More Flexible Superannuation) Bill 2020*
- *Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Bill 2019*

Superannuation trustees should remain informed of the status of these bills and any implications of their passage on their fund. It is not clear whether these Bills are likely to be prioritised for debate when Parliament resumes in June.

FAR & Royal Commission Reforms Deferral

8 May 2020
Policy announcement

LINK TO DETAILS

Treasury announced that it would adopt a six-month deferral to the implementation of commitments associated with the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry as a result of the significant impacts of the coronavirus.

Treasury released exposure drafts of the *Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures)) Bill 2020* and *Financial Sector Reform (Hayne Royal Commission Response – Stronger Regulators (2020 Measures)) Bill 2020* in February, and a Discussion Paper on extending the Banking Executive Accountability Regime (BEAR) to superannuation trustees as part of the Financial Accountability Regime (FAR).

Under the updated timetable, those measures that were to be introduced into the Parliament by 30 June 2020, will now be introduced by December 2020. Similarly, those measures originally scheduled for introduction by December 2020 will now be introduced by 30 June 2021.

> *Superannuation trustees should adjust planning for the implementation of these reforms to account for the deferral. Early planning will be important for these changes, particularly given the material impact that these reforms may have on superannuation trustees and funds.*

CGT Relief

25 May 2020
Received assent

LINK TO DETAILS

The *Treasury Laws Amendment (2020 Measures No. 1) Bill 2020* has received assent. The Bill **makes 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.

> *Superannuation trustees should ensure that any consideration of potential merger or successor fund transfers includes the now permanent tax relief on asset transfers.*

Retirement Income Framework

22 May 2020
Deferral

LINK TO DETAILS

The Government has announced that it will defer the introduction of the Retirement Income Covenant, previously scheduled to commence on 1 July 2020. A revised date will be determined following further consultation.

The Covenant requires trustees to develop a retirement income strategy for their members. As noted by the Government superannuation laws currently require trustees to formulate, review and give effect to investment, risk management and insurance strategies.

Minister Jane Hume state that "there is nothing stopping funds and their trustees from developing retirement income strategies now and we'd encourage them to do so."

> *Superannuation trustees may consider prioritising the development of a retirement income strategy, taking into account that legislation will not be passed in the immediate future.*

More Flexible Superannuation

13 May 2020
Bill introduced & Regulations made

LINK TO DETAILS

The *Treasury Laws Amendment (More Flexible Superannuation) Bill 2020* was introduced to Parliament. The Bill seeks to amend the *Income Tax Assessment Act 1997* to enable individuals aged 65 and 66 to make up to three years of non-concessional superannuation contributions under the bring forward rule. The measure was part of the 2019-20 Commonwealth Budget, and changes:

- the age at which the work test starts to apply for voluntary concessional and non-concessional contributions increasing from 65 to 67; and
- enabling individuals aged 65 and 66 to make up to three years of non-concessional superannuation contributions under the bring forward rule.

The *Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020* were made on 28 May, amending the SIS Regulations to implement the increases in the age at which the work test applies and the cut-off age for spouse contributions. The changes commence on 1 July 2020.

Superannuation trustees should ensure that their administration provider or function amends systems, processes, and procedures to accommodate the change (if passed). Any website, publications, member service or such material which refers to the contribution rules are updated to reflect any changes.

FinTech Sand Box

28 May 2020
Regulations made

LINK TO DETAILS

The *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020* were made, providing a 24-month exemption from 1 September 2020 from the AFSL requirements for the purposes of testing financial services relating to certain financial products.

The enhanced sandbox broadens the range of financial services available for market testing, including services which advise on insurance and superannuation.

Participants will be required to demonstrate that their proposed service is genuinely innovative and is likely to result in net consumer benefit, and will be required to have adequate professional indemnity insurance and be a member of the *Australian Financial Complaints Authority* (AFCA).

Superannuation trustees should consider whether the expanded FinTech sandbox provides an opportunity for testing member service technologies or partnering with member service technology providers.

DDO Obligations Deferral

8 May 2020
Announcement

LINK TO DETAILS

ASIC announced that it will defer the commencement date of the design and distribution obligations (DDO) for six months, until 5 October 2021 and made *ASIC Corporations (Deferral of Design and Distribution Obligations) Instrument 2020/486*. The commencement dates were deferred so industry participants can focus on immediate priorities and the needs of their customers during the pandemic and related economic contraction.

ASIC has indicated it expects entities will continue preparing for commencement of the DDO regime on the extended timeline. Draft guidance for the design and distribution obligations was released for consultation on 19 December 2019 (closing on 11 March 2020).

ASIC indicated it will continue to work towards releasing final guidance in mid-2020 responding to industry requests for that guidance to be finalised.

Superannuation trustees should adjust existing planning and projects transitioning to the DDO regime to align with the revised commencement dates.

TECHNICAL CHANGES AND UPDATES

SuperMatch

19 May 2020
Announcement

LINK TO DETAILS

The ATO has suspended its SuperMatch service while it works with industry to implement further controls on usage.

This comes following identity fraud concerns around member accounts being established with funds using the fund's member join portal. Requests have then been made to rollover ATO held monies and rollovers in from other funds using SuperMatch. The ATO and APRA have attributed the cause to insufficiently strong online account controls at the fund level.

Members can, however, continue to consolidate their super through myGov or by providing rollover details to their new fund.

Superannuation trustees should review their member online security controls and protocols and engage in penetration testing where appropriate to determine the adequacy of their controls. Consideration should also be given to participating in discussions on the topic with regulators.

Modern Slavery

4 May 2020
Announcement

LINK TO DETAILS

The *Modern Slavery Act* requires entities (including most superannuation trustees) to submit modern slavery statements to the Australian Border Force (ABF) within six months after the end of their reporting periods.

To support reporting entities impacted by the COVID-19 pandemic to meet their obligations under the Act, the legislated deadline has been extended for reporting by an additional three months for all entities whose reporting periods end on or before 30 June 2020.

This extension only changes the deadline for submission of modern slavery statements and does not alter the reporting periods for entities, which remain unchanged.

Most superannuation trustees will see the first reporting date move from 31 December 2020 to 31 March 2021 (for the financial year ending 30 June 2020).

Financial Reporting & Audits

19 May 2020
Legislative instrument

LINK TO DETAILS

ASIC has made *ASIC Corporations (Amendment) Instrument 2020/452* to assist listed and unlisted entities, including proprietary companies, registered schemes and financial services licensees, affected by the impacts of COVID-19 by enabling them more time to report and have audits.

The extended lodgement deadlines will only apply where the normal lodgement deadline has not already passed at the time of commencement of the instrument. The deadlines are calculated as periods after balance dates.

Where possible, however, entities should continue to lodge and report to members within the statutory deadlines having regard to the information needs of shareholders, creditors and other users of their financial reports, or to meet borrowing covenants or other obligations.

Superannuation trustees should review the ASIC instrument and determine whether they can lodge within the statutory deadlines and where not possible ensure that reporting can occur within the relief period.

AML-CTF Rule

6 May 2020
Legislative instrument

LINK TO DETAILS

AUSTRAC issued *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2020 (No. 2)*, amending Part 4.15 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

The amendments provide greater legal certainty for reporting entities who rely on alternative identity proofing processes. Where it is not possible to verify information in accordance with an applicable customer identification procedure, based on an original, or certified copy or certified extract, due to COVID-19 pandemic measures, a reporting entity may rely on a copy.

Superannuation trustees may wish to ensure that employees involved in customer or member verification are aware of the new rule and reflect it in processes and procedures.

Coronavirus Early Release Administration

11 May 2020
Update

LINK TO DETAILS

A Parliamentary committee established to inquire into the Government's response to the new Coronavirus pandemic heard evidence regarding the detection of some fraudulent claims having been made under the Coronavirus early release of super initiative.

It subsequently issued *CRT Alert 026/2020* advising that funds would continue to receive daily electronic files, but these would be one day later than previously (and delivered at 11 am).

The ATO will also, when required, generate and send a second 'additional information file' which will contain determinations where the ATO recommends trustees further strengthen verification processes with the member over and above existing verification processes that apply to all determinations.

Superannuation trustees should ensure that administration business functions or providers are managing the release process adequately, and that the necessary verification procedures are being completed prior to payments being made.

Family Law Interest Rate

20 May 2020
Determination

LINK TO DETAILS

The Australian Government Actuary has made the *Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2020*.

This instrument provides the interest rate for adjusting entitlements under certain orders or agreements made under the Family Law Act 1975 and for splitting future superannuation benefits for the adjustment period that is Financial Year 2020/21.

It also provides the method by which the interest rate is calculated for that purpose for an adjustment period that includes a period within that financial year.

Superannuation trustees should ensure that administration processes and systems are reviewed and aligned with the rates in the determination.

APRA Industry Funding Bill

13 May 2020
Bill introduced

LINK TO DETAILS

The *Superannuation Supervisory Levy Imposition Amendment Bill 2020* was introduced to Parliament, which seeks to amend the *Superannuation Supervisory Levy Imposition Act 1998* to increase the statutory upper limit on the amount of levies APRA can collect from the entities it prudentially regulates.

The statutory upper limit would be increased from $1.5 million to $10 million to provide APRA with the flexibility to continue to have its activities fully funded by regulated entities.

The Levy Imposition Amendment Bills also make amendments to how the indexation factor used to index the statutory upper limit is calculated, moving from annual CPI based calculations to quarterly CPI based calculations.

Superannuation trustees should ensure that financial planning and budgets include provision for APRA levies.

Electronic AGMs & Document Execution

5 May 2020
Determination

LINK TO DETAILS

The *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* deals with provisions about meetings and document signatures that are not compatible with public health requirements for social distancing during the Coronavirus pandemic.

The Determination ensures that companies and other entities that are required to or wish to hold a meeting, such as an Annual General Meeting (AGM), may do so using technology rather than face-to-face meetings.

The Determination enables a quorum, votes, notices and the asking of questions to be facilitated electronically. The Determination also allows for meeting information to be circulated and accessed electronically.

The Determination alters the operation of section 127 of the *Corporations Act* to give certainty that when company officers sign a document electronically, the document has been validly executed.

The Determination has effect for six months from its commencement.

Superannuation trustees should plan for any AGM of the trustee company that was planned to occur in the next six months and adopt appropriate measures to enable the meeting to occur electronically.

GUIDANCE AND POLICY

ASIC Warning on Investment Advertising

7 May 2020
Media Release

LINK TO DETAILS

The Australian Securities and Investments Commission (ASIC) issued a media release (20-107MR) warning consumers of concerns in relation to Investment advertising is not always 'true to label'.

ASIC specifically warned consumers about investment advertising that compares fixed-term investment products to bank term deposits, noting a surge in such marketing of fixed-term investment products recently.

ASIC stated that it views these investment products as riskier than term deposits because they may be issued by entities that are not well-capitalised, not protected by the Government's Financial Claims Scheme, and not supervised by the Australian Prudential Regulation Authority (APRA).

ASIC also noted that some are also backed by concentrated portfolios of higher risk unlisted and illiquid assets.

Superannuation trustees should review any advertising material (particularly in relation to direct investment options and fixed interest investment options) and ensure that any advertising or promotional material is accurate and not misleading or deceptive.

ASIC FAQ Update

26 May 2020
Guidance

LINK TO DETAILS

ASIC updated its COVID-19 – Information for superannuation trustees FAQ to include further information on the Early Access to Superannuation Scheme.

The updates relate to:

- Exit Statements: If, due to the volume of exit statements that a trustee must process due to the COVID early access scheme, a trustee provides an exit statement more than 1 month after the relevant time, the trustee must: be able to demonstrate that they made "reasonable efforts" to meet the 1-month timeframe; and provide the exit statement as soon as practicable and no more than 6 months after the member ceased to hold the product. (1A)
- Communication: In addition to the exit statement requirements, trustees should understand how a zero or low balance due to accessing the COVID-19 early access to superannuation scheme affects a member's interest in the fund and provide appropriate and timely communications to affected members, including impacts to members' insurance. (1B & 1C)
- RG 97: ASIC will be amending the transitional arrangements for PDSs to allow entities to come into the new disclosure regime from 30 September 2020 and require any PDS given on or after 30 September 2022 to comply with the new disclosure regime. (2E)

Superannuation trustees should remain cognizant of ASIC's updates. Regular communication with administrators is vital to identify any potential problems with timely compliance with current obligations related to member communications.

PYS/PMIF Elections after SFT

15 May 2020
FAQs updated

LINK TO DETAILS

APRA has updated the FAQs on its website in relation to the *Protecting Your Super* (PYS) and *Putting Members' Interests First* (PMIF) reforms. The updates specify that the Government has indicated to APRA that it will pursue amendments to the *Superannuation Industry (Supervision) Act 1993* to provide that:

- elections regarding the provision of insurance under sections 68AAA, 68AAB and 68AAC of the SIS Act remain valid following a successor fund transfer (SFT); and
- the application and transition provisions of the *Treasury Laws Amendment (Putting Members' Interests First) Act 2019* apply such that members who were not required to make an election under the Act (such as members who provided an election before 1 November 2019 or members under 25 prior to 1 April 2020) are not required to elect following an SFT.

APRA notes it will take a facilitative approach to breaches in these circumstances until such time as legislation is passed.

Superannuation trustees considering an SFT or currently going through an SFT should remain cognizant of this guidance and understand whether and to what degree transferring members are impacted.

Insurance in Super

15 May 2020
Code Updated

LINK TO DETAILS

The Insurance in Superannuation Voluntary Code of Practice has been updated to align it with the *Protecting your Super* and *Putting Members' Interests First* legislative packages and to ensure it remains clear, relevant and focused on improving standards for insurance in super.

A code review summary is available, detailing the changes including revisions that:

- make it clear that members are eligible for insurance protections who opt to maintain their automatic insurance when it is due to lapse because the account has become inactive, is low balance or while under 25;
- refine the requirement to publish the insurance strategy to specify that it will include the types and levels of cover;
- delete sections superseded by legislative and regulatory developments such as member outcomes assessments and business performance reviews;
- place additional emphasis on affordability; and
- include explicit obligation that trustee should set out and publish basis for determining default settings.

Superannuation trustees that have signed up to the voluntary code should review the changes and review processes to ensure compliance.

Expert Group on Young People & Money

8 May 2020
Announcement

LINK TO DETAILS

ASIC announced that it would establish a national expert group on young people and money. The announcement comes on the back of the release of Organisation for Economic Co-operation and Development (OECD) *2018 Programme for International Student Assessment* (PISA) financial literacy results.

The survey measured how well 15-year-olds understand commonly used financial concepts and how capable they are at solving routine problems in financial contexts. Australian students performed above the OECD average and Australia ranked fifth out of the 20 participating countries.

The group will be focused on:

ASIC is committed to helping all Australians to be in control of their financial lives and is focused on:

- Building capabilities to support effective financial education in schools;
- Supporting families to have positive money conversations at home; and
- Promoting opportunities for young people to connect financial education to real life experiences, including transitions from school to work or further study.

Superannuation trustees may wish to consider participating in this initiative, with retirement savings behaviours being potentially an important part of any program initiated or managed by the group.

Total and Permanent Disability Claims

19 May 2020
Initiative

LINK TO DETAILS

The Financial Services Council (FSC) announced an initiative on behalf of participating life insurance member companies to ensure that if people lose their job, are stood down or have reduced working hours due to COVID-19, until 27 September 2020, this will not affect their total and permanent disability (TPD) cover if they make a claim. Claims will be assessed based on work arrangement as at 11 March 2020 (the date when COVID-19 was declared a pandemic).

Insurers are to confirm their participation by making a public statement and announcement on their website, including details of how they will apply the initiative.

Eligibility criteria requires that the person was working in their normal capacity on 11 March 2020; have had reduced working hours or lost their job due to COVID-19 since 11 March 2020; become disabled as a result of illness or injury between 11 March and 27 September 2020. TPD cover must be maintained at the time of total and permanent disability and a completed claim must be submitted on or before 1 January.

Superannuation trustees should confirm whether their insurer is applying the initiative to their members.

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