MAY 2021

QMV LEGAL

LEGAL, REGULATORY, & POLICY UPDATE

PENSIONS AND SUPERANNUATION

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IN BRIEF

*The **Your Future, Your Super Bill** took the first step towards becoming law, following the House of Representatives passing an amended Bill. The sittings also saw passage by the House of the **Financial Regulator Assessment Authority Bills.***

*The **Commonwealth Budget** was announced on 11 May with various measures that impact superannuation.*

*Treasury introduced **draft legislation proposing miscellaneous amendments to the Treasury portfolio laws** and, in accordance with the Budget announcement, **Treasury Laws Amendment (Measures for Consultation) Bill 2021: Superannuation Information for Family Law Proceedings** to facilitate visibility of superannuation assets in family law proceedings.*

*APRA issued additional guidance on the **new data standards** and **APRA connect** and ASIC provided guidance on the **insurance claims handling service**.*

MAJOR UPDATES

Commonwealth Parliament

May 2021
Parliamentary Business

LINK TO DETAILS

Commonwealth Parliament sat between 11-13 May, and the House of Representatives held an additional sitting between 24-27 May.
No legislation was passed, however two relevant bills were introduced:

- *Financial Regulator Assessment Authority Bill 2021*
- *Financial Regulator Assessment Authority (Consequential Amendments and Transitional Provisions) Bill 2021*

The House passed the following Bill with amendments, which will now move to the Senate:

- *Treasury Laws Amendment (Your Future, Your Super) Bill 2021*

The following superannuation related bills remain before Parliament:

- *Treasury Laws Amendment (2021 Measures No. 1) Bill 2021*
- *Treasury Laws Amendment (More Flexible Superannuation) Bill 2020*
- *Treasury Laws Amendment (2020 Measures No. 4) Bill 2020*
- *Security Legislation Amendment (Critical Infrastructure) Bill 2020*
- *Treasury Laws Amendment (Self Managed Superannuation Funds) Bill 2020*

Superannuation trustees should remain apprised of bill status to ensure preparedness for any required change implementation, including ensuring adequate planning and resources are in place.

Commonwealth Budget

May 2021
Treasury

LINK TO DETAILS

The Treasurer delivered the 2021-22 Federal Budget on Tuesday 11 May 2021, which included the following policy announcements that are relevant for superannuation trustees:

- Removal of the $450 monthly earnings minimum income threshold under which employees do not have to be paid superannuation guarantee;
- Confirmation that the Government will not proceed with the previously announced measure that would extend early release of super for victims of family and domestic violence;
- Changes to the First Home Super Saver Scheme;
- Reduction of the eligibility age to make downsizer contributions into superannuation from 65 to 60;
- Ability to exit a specified range of legacy retirement products, together with associated revenues, for a two-year period;
- Partial repeal of the Work Test;
- Relaxation of the SMSF residency requirements;
- Amendments to the Taxation of Financial Arrangements legislation to facilitate access to hedging rules on a portfolio hedging basis;
- Additional funding to improve the uptake of *the* Pension Loans Scheme;
- Financial Market Infrastructure regulatory reform package;
- Industry working group to develop mechanisms to facilitate transfer from closed life insurance and managed investment scheme products;
- Restoration of regulatory relief for Foreign Financial Service Providers;
- Additional funding to support stronger super consumer outcomes of superannuation funds; and
- Improving the Visibility of Superannuation Assets in Family Law Proceedings.

For more details on the Commonwealth Budget view our Commonwealth Budget 2021-22: Summary for Superannuation Trustees.

Your Future, Your Super

25 May 2021
Proposed amendments & House vote

LINK TO DETAILS

The House of Representatives passed the *Treasury Laws Amendment (Your Future, Your Super) Bill 2021* with amendments removing the sections that would create regulatory powers to prohibit certain payments or investments. The Bill will now move to the Senate, where there are already proposed amendments which would result in the:

- Removal of the entire best financial interests schedule (including the reversal of the evidential burden of proof);
- Deferral of the commencement date for the proposed stapling measures until 2022, an amendment to the meaning of "stapled fund" and an exclusion from the measures for dangerous occupation employees; and
- Inclusion of choice products and administration fees in the annual performance test with a deferred commencement of the measure until 2023.

The prospects of the Bill in the Senate are uncertain, however it seems that the commencement date of 1 July 2021 seem unworkable and likely to change if passed.

Advice Fees in Super

13 May 2021
Regulations made

LINK TO DETAILS

The Government has made *Financial Sector Reform (Hayne Royal Commission Response–Advice Fees) Regulations 2021*, which outline the specific records fee recipients must keep to comply with the obligations for ongoing fee arrangements.

The regulations support *the Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021*, which was passed by Parliament earlier this year and implemented Financial Services Royal Commission recommendations 2.1, 3.2 and 3.3 regarding ongoing fee arrangements within superannuation.

Specifically, a fee recipient is required to keep a record of:

- each fee disclosure provided to the client, as well as the date given;
- any notification that a client wishes to renew, terminate, or not renew an ongoing fee arrangement, as well as the date notified;
- the date and basis upon which an ongoing fee arrangement was terminated;
- each copy of consent for the deduction of fees, as well as the date of consent;
- each notice of a variation or withdrawal of consent by the client and the corresponding receipt of the notice, well as the date of any communications;
- a copy of any communication with a third-party provider regarding consent to the deduction of fees and the date of the communication; and
- the details of any arrangement with a third-party account provider regarding the deduction of fees under an ongoing fee arrangement.

The Regulations also amend the *Electronic Transactions Regulations 2020* to permit written consents in relation to financial product advice fees, paid out of a superannuation interest, to be provided electronically.

Superannuation trustees should review the regulations and consider the impact on current record keeping practices for ongoing fee arrangements.

Visibility of superannuation assets

31 May 2021
Exposure Draft

LINK TO DETAILS

Treasury released exposure draft legislation to facilitate the identification of superannuation assets by parties to family law proceedings, leveraging information held by the ATO.

The *Treasury Laws Amendment (Measures for Consultation) Bill 2021: Superannuation Information for Family Law Proceedings* proposes to allow a party to a superannuation family law split to apply to the Court to request information about the identity and value of their former partner's superannuation assets from the ATO.

The draft legislation also authorises the Court to pass on any information it obtains from the ATO to the parties and their lawyers. The applicant must be a former spouse or de facto.

This initiative was initially announced as part of the 2018 Women's Economic Security Statement (and delayed due to the pandemic) and detailed within the 2021 Federal Budget earlier this month.

Submissions are invited until the closing date of 28 June 2021.

Superannuation trustees should familiarise themselves with the draft legislation and consider submitting a response. Consideration should be given to any disclosure impacts and outsourced administration arrangements.

Financial Regulator Assessment Authority

13 May 2021
Legislation

LINK TO DETAILS

The *Financial Regulator Assessment Authority Bill 2021* was introduced and passed by the House of Representatives alongside the *Financial Regulator Assessment Authority (Consequential Amendments and Transitional Provisions) Bill 2021*. The bill gives effect to recommendations 6.13 and 6.14 of the Financial Services Royal Commission, by establishing the Financial Regulatory Assessment Authority to assess and report on the effectiveness and capability of APRA and ASIC.

The Bill creates a statutorily independent Authority consisting of three appointed part-time members (including the Chair) and the Secretary of the Department of the Treasury (or a nominated Senior Executive Service employee in the Treasury) as an ex-officio member. When it is established, the Authority will be supported by a secretariat staffed by the Treasury.

The new authority will not have the ability to direct, make, assess or comment on specific cases of the regulators' enforcement actions, regulatory decisions, complaints and like matters.

The Bill seeks to:

- establish the Authority and provides for its functions and powers;
- set out how members and staff members of the Authority are appointed or made available, and how the Authority makes decisions (including delegations); and
- safeguard information that APRA and ASIC provide to the Authority by prohibiting the unauthorised use or disclosure of protected information provided to the Authority (contravention of the prohibition is a criminal offence).

The measure is intended to complement existing oversight mechanisms which do not have the requisite technical expertise.

Superannuation trustees should note the bill.

TECHNICAL CHANGES AND UPDATES

Pension Drawdown

30 May 2021

Consultation

LINK TO DETAILS

The Government has announced an extension to the temporary reduction in superannuation minimum drawdown rates. The rates were reduced by 50 percent for the 2019-20 and 2020-21 financial years in response to the Coronavirus pandemic but were scheduled to end 30 June 2021.

This extension means the reduced rates will continue until 30 June 2022.

Superannuation trustees should ensure the appropriate teams are made aware of the extension, including outsourced providers, and that all fund collateral is updated to reflect this announcement. Drawdown and payment processes should be updated to ensure the minimum drawdown amounts are retained in the 2021-22 financial year.

ECPI Measures

Exposure Draft

21 May 2021

LINK TO DETAILS

Treasury released exposure draft legislation which intends to streamline the administration requirements for the calculation of exempt current pension income (ECPI).

The *Treasury Laws Amendment (Measures For Consultation) Bill 2021: Providing choice for trustees calculating exempt current pension income* provides choice for superannuation fund trustees to use their preferred method of calculating ECPI where the fund is fully in retirement phase for part of the income year but not for the entire income year.

Additionally, the *Treasury Laws Amendment (Measures for Consultation) Bill 2021: Requirement for actuarial certificates for certain superannuation funds* removes a redundant requirement for superannuation funds to obtain an actuarial certificate when calculating ECPI, where the fund is fully in retirement phase for all the income year.

Consultation closes on 18 June 2021.

Superannuation trustees should familiarise themselves with the draft legislation and review the potential impacts on retirement phase products.

Supervisory Levies

18 May 2021

Consultation

LINK TO DETAILS

Treasury is seeking feedback on the proposed financial institutions supervisory levies for the 2021-22 financial year. The discussion paper, jointly prepared by Treasury and APRA, outlines operational costs expected to be incurred by APRA and other specific Commonwealth agencies for the 2021-22 financial year, in addition to the carry-over of some costs incurred within the 2020-21 financial year.

The discussion paper notes the total funding required for all relevant Commonwealth agencies for 2021-22 is $262 million, which is a 17.8% increase from 2020-21 requirement.

Relevant to superannuation, levies totalling $95.5 million are required to cover funding for APRA ($57.8m) and ASIC, the ATO and the Gateway Network Governance Body (GNGB) (combined $37.6m). The total superannuation-related levies required for 2020-21 were $82.1 million.

Responses to the consultation close on 11 June 2021.

Superannuation trustees should note the expected change in supervisory levies and consider providing feedback to the discussion paper.

GUIDANCE AND POLICY

Claims Handling

May 2021
Information sheet

LINK TO DETAILS

ASIC released Information sheet *INFO 253 Claims handling and settling: How to comply with your AFS licence obligations*, which outlines the obligations for superannuation trustees regarding the requirement to provide a 'superannuation trustee service' and the core aspect of the service being "assisting members (and their beneficiaries) with insurance claims."

The information paper highlights that the "substantive obligations of an AFS licensee with a claims handling authorisation are relevant to understanding an RSE licensee's obligations in providing a superannuation trustee service when assisting members and their beneficiaries with making insurance claims."

This follows the passage of the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* and the introduction of Regulations on 15 April 2021. ASIC notes that the Regulations excluded certain people from being a 'claimant intermediary' which has subsequently been updated within the Information Sheet.

Superannuation trustees should review the amended information and consider ASC's guidance in relation to assisting members with insurance claims.

APRA Data Reporting

21 May 2021
Guidance

LINK TO DETAILS

APRA published frequently asked questions (FAQs) providing guidance on commonly asked questions about reporting and the Superannuation Data Transformation Phase 1 reporting standards. The questions are intended to clarify reporting issues raised by RSE licensees and APRA "encourages entities to report to APRA in accordance with the guidance provided [in the FAQs] to the extent practicable."

In addition to general FAQs about the new reporting standards, several specific FAQs have been released for a selection of reporting standards, along with working examples.

APRA intends to incorporate the guidance into the final reporting standards, forms and instructions and will provide formal notice when this occurs. APRA plans to release FAQs on a regular basis in the lead up to the first collection of data under the new reporting standards on 30 September 2021.

Superannuation trustees should ensure that teams tasked with APRA reporting are aware of the guidance.

APRA Connect

31 May 2021
Announcement

LINK TO DETAILS

APRA published further information to assist entities in preparing for the introduction of APRA Connect. Relevant to superannuation, the first data collection to be introduced in APRA Connect when it goes live will be the Super Data Transformation collections, due September 2021.

An APRA Connect test environment will be available from 17 June 2021 for users to become familiar with APRA Connect and trial submission of work before they need to submit in the APRA Connect production environment from 13 September 2021. APRA expects that from 17 June, entities will log into the test environment, assign and manage user roles and permissions, leverage guidance material, practice data preparation and submission, and contact APRA for any technical issues.

APRA has reminded reporting entities that they are responsible for ensuring they set up their users and are able to submit information when it is due, and as a pre-requisite, entities must ensure that all users establish their digital identity through myGovID and are authorised by their organisation in Relationship Authorisation Manager (RAM) to access APRA services on its behalf. A new Direct to APRA (D2A) form will be available shortly for entities to nominate an initial Regulatory Reporting Administrator for each ABN.

APRA has reminded users that dual reporting systems will be in place for the medium-term post APRA Connect implementation, and that data rules and validation requirements will be enforced so trustees will need to ensure the specific reporting standard requirements and taxonomies comply.

Superannuation trustees should ensure teams responsible for reporting to APRA are familiar with the changes and APRA's expectations regarding reporting preparedness.

Miscellaneous Treasury Portfolio Amendments

05 May 2021
Consultation

LINK TO DETAILS

Treasury released exposure draft Bill and Regulations that cover proposed minor and technical amendments to the Treasury portfolio laws. The amendments seek to ensure the law operates as intended by correcting technical or drafting defects, removing anomalies and addressing unintended outcomes. The amendments are part of the Government's commitment to the ongoing care and maintenance of Treasury laws. The following are relevant to superannuation:

- Amendment of the *Income Tax Assessment (1997 Act) Regulations 2021* to ensure that if a fee refund resulting from the 3% cap on low balance accounts, and the refund is paid from a general reserve, it is not considered a concessional contribution.
- Addition of a provision into the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (SUMLM Act) to allow the Commissioner of Taxation to recover amounts overpaid under the measures introduced as part of the PYS reforms allowing the ATO to consolidate superannuation.
- Amendment to the SUMLM Act in relation to New-Zealand (NZ) sourced amounts held by the ATO and the transfer of amounts to NZ KiwiSaver scheme providers.

Superannuation trustees should review the proposed amendments and consider providing feedback to Treasury.

ENFORCEMENT & CASE LAW

ASIC vs AMP

27 May 2021
Civil penalty proceeding

LINK TO DETAILS

ASIC has commenced civil penalty proceedings in the Federal Court against five companies that are, or were, part of the AMP Limited group, alleging that these entities were involved in charging life insurance premiums and advice fees to more than 2,000 customers despite being notified of their death. Between May 2015 and August 2019, ASIC alleges:

- life insurance premiums were deducted from 2,069 deceased customers' superannuation accounts despite being notified that the customer had died;
- financial advice fees were deducted from deceased customers' superannuation accounts despite being notified that the customer had died;
- failure to ensure that a system was in place that ensured that it did not charge deceased customers;
- failure to ensure that a system was in place to manage conflicts of interest between the AMP Companies' interests in continuing to charge premiums and advice fees and members' interests in premiums and advice fees ceasing after death; and
- contravention of their overarching obligations as Australian financial services licensees to act efficiently, honestly and fairly.

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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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