

LEGAL, REGULATORY & POLICY UPDATE

PENSIONS AND SUPERANNUATION

INSIDE THIS EDITION

- Financial Accountability Regime
- APRA Thematic Reviews
- CPS 511 Remuneration
- Your Future, Your Super FAQs
- PMIF
- Member Outcomes

[@SUBSCRIBE](#)


Jonathan Steffanoni
Partner

IN BRIEF

The legislative agenda continued to be busy for superannuation trustees, with the **Financial Accountability Regime Bill, 2021 Budget Measures Bill, and unexpected Bill seeking to un-staple accounts for members in hazardous occupations** all amongst new Bills introduced to Parliament.

APRA released the findings of its thematic review into **expenditure management and unlisted asset valuation** and issued a final version of its remuneration guidance in the form on **CPG5511**.

The release of government's **Ransomware Action Plan and Digital ID reforms** also present as important developments in the information management domain.

MAJOR UPDATES



Commonwealth Parliament

October 2021
Parliamentary Business

[@LINK TO DETAILS](#)

Commonwealth Parliament sat on 18-21 and 25-28 October. The following superannuation related bills were introduced:

- [Superannuation Guarantee \(Administration\) Amendment Bill 2021](#)
- [Corporations Amendment \(Meetings and Documents\) Bill 2021](#)
- [Financial Accountability Regime Bill 2021](#)
- [Financial Sector Reform \(Hayne Royal Commission Response No. 3\) Bill 2021](#)
- [Financial Services Compensation Scheme of Last Resort Levy Bill 2021](#)
- [Financial Services Compensation Scheme of Last Resort Levy \(Collection\) Bill 2021](#)
- [Treasury Laws Amendment \(Enhancing Superannuation Outcomes for Australians and Helping Australian Businesses Invest\) Bill 2021](#)

The following superannuation related bill was passed:

- [Financial Sector Reform \(Hayne Royal Commission Response - Better Advice\) Bill 2021](#)

The following superannuation related bills remain before Parliament:

- [Treasury Laws Amendment \(2021 Measures No. 5\) Bill 2021](#)
- [Treasury Laws Amendment \(2021 Measures No. 7\) Bill 2021](#)
- [Treasury Laws Amendment \(2020 Measures No. 4\) Bill 2020](#)
- [Security Legislation Amendment \(Critical Infrastructure\) 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.



Financial Accountability Regime

28 October 2021
Legislation

[LINK TO DETAILS](#)

The [Financial Accountability Regime Bill 2021](#) and [Financial Sector Reform \(Hayne Royal Commission Response No. 3\) Bill 2021](#) were introduced into Parliament, the latter of which seeks to make consequential amendments and transitional matters arising from the enactment of the former bill and to establish the compensation scheme of last resort.

The substantive FAR Bill contains some differences from the draft legislation released for consultation in July 2021. Key items include:

- The planned commencement has not changed with commencement for RSE licensees remaining 1 July 2023 or 18 months after commencement of the legislation.
- Ministerial power to specify bodies corporate which would be an accountable entity is removed.
- Provisions around prescribed responsibilities and positions have been clarified with the Minister having the power to prescribe responsibilities and positions, as well as a new section on alternative tests for when a person is an accountable person.
- Revision of the obligation to take reasonable steps in conducting responsibilities "to prevent matters from arising that would (or would be likely to) result in a material contravention by an accountable entity" of prescribed legislation.
- Reasonable steps definition removed in relation to the taking of appropriate actions to ensure compliance in relation to the matter.
- Prescribed provisions under which ASIC has limited functions and powers.
- Amended section on disclosure for the purpose of seeking review or legal advice.
- Section on ancillary contravention of civil penalty provisions added.
- Revision to the prohibition on indemnification of accountable entities to apply to significant related entities of an accountable entity.

Superannuation trustees should monitor the Bill's progress through Parliament and begin implementation planning.



Compensation Scheme of Last Resort

28 October 2021
Legislation

[LINK TO DETAILS](#)

The [Financial Services Compensation Scheme of Last Resort Levy Bill 2021](#), [Financial Services Compensation Scheme of Last Resort Levy \(Collection\) Bill 2021](#) and Schedule 3 to the [Financial Sector Reform \(Hayne Royal Commission Response No. 3\) Bill 2021](#) introduces the Compensation Scheme of Last Resort (CSLR).

The CSLR is intended to support confidence in the financial system's external dispute resolution framework. The scheme will provide compensation where a determination issued by AFCA remains unpaid and the determination relates to a financial product or service within the scope of the scheme. The Commonwealth will fund the establishment of the scheme and its operation in the first year. A levy will be imposed on the financial services industry to fund the scheme in future years.

The establishment of the scheme and the supporting levy framework commences on the later of 1 January 2022 and the day after Royal Assent. The operator of the scheme can begin to make compensation payments under the scheme from 1 July 2022.

Superannuation trustees should note the Bill.



APRA Thematic Reviews

26 October 2021
Information Paper

[LINK TO DETAILS](#)

APRA published findings of three thematic reviews undertaken over the last 12 months covering:

- Strategic and business planning;
- Fund expenditure; and
- Unlisted asset valuation practices.

Each item is covered individually below.

The purpose of the information paper, according to APRA, is to "share with RSE licensees a number of risks and vulnerabilities that they must have front of mind to drive better practices across the industry that lead to continuing improvements in outcomes." APRA expects each RSE licensee to assess itself against the findings discussed in this Information Paper, with a view to identify any sub-standard practices and improve relevant processes and procedures.

Superannuation trustees should review the Information Paper closely and determine whether they can improve their processes and procedures.



SPS 515

26 October 2021
Information Paper

[LINK TO DETAILS](#)

Between March and June 2021, APRA undertook a benchmarking exercise which sought to assess the progress of 24 RSE licensees in implementing SPS 515 and identified areas where RSE licensees must strengthen their practices during the upcoming BPR and business planning cycle. The areas identified are:

- creating better connection between BPR findings and updates to business plans;
- clearly explaining how strategic objectives support desired member outcomes;
- conducting more robust analysis of the drivers of business performance;
- considering the entirety of the RSE licensee's business operations as a whole, especially for RSE licensees with multiple RSEs;
- embedding stress testing of financial projections; and
- conducting robust and appropriate member cohort analysis.

Superannuation trustees should consider APRA's findings in undertaking the upcoming BPR and business planning processes.



Unlisted Asset Valuation

26 October 2021
Information Paper

[LINK TO DETAILS](#)

Between September 2020 to March 2021, APRA conducted a thematic review of unlisted asset valuation practices present throughout 2020. The review sought to assess industry practices and identify any key areas for improvement. APRA found:

- Most RSE licensees demonstrated a proactive approach to revaluing unlisted assets in response to the heightened market volatility;
- Revaluation frameworks were typically inadequate, with no predefined revaluation triggers and weak or no processes for monitoring and adjusting revaluations;
- There was limited board engagement; and
- Several RSE licensees had an over-reliance on external parties.

Superannuation trustees should review their valuation policies and procedures and consider whether any uplift is required in accordance with APRA's findings.



Expenditure Management

26 October 2021
Information Paper

[LINK TO DETAILS](#)

Between November 2020 and October 2021, APRA undertook a thematic review across 12 RSE licensees that focused on expenditure by subset of RSE licensees on advertising, sponsorships and promotions (marketing expenditure). This now also provides a baseline understanding of the extent to which RSE licensees would need to change their practices to meet the heightened expectations of the best financial interests duty.

APRA identified the following key areas for improvement:

- Approval of marketing budgets, business cases and metrics for the overall marketing program as part of the annual business planning cycle, which include clear and objective purposes for such marketing expenditure, consistent with the sole purpose test and demonstrate a clear decision as to whether the amount is appropriate.
- Processes for measuring outcomes of marketing campaigns and activities, including business cases with purpose and expected outcomes clearly articulated, quantitative monitoring of impact and measurement of actual performance against metrics.
- Metrics to assess marketing campaign benefits.
- Additional benefits obtained as part of an arrangement should only be used for purposes that are clearly consistent with improved outcomes for members and not for the benefit of directors, executives, staff or associates of the RSE licensee.

Superannuation trustees should review the Information Paper and consider APRA's findings in conjunction with any implementation activities associated with the new best financial interests duty.



Choice Product Heatmap

28 October 2021
Information Paper

[LINK TO DETAILS](#)

APRA published an analysis of the performance of choice superannuation products ahead of releasing its first Choice Product Heatmap in late 2021. The Information Paper identifies 568 choice products within APRA-regulated superannuation funds, offering approximately 9000 distinct investment options and about 43,000 investment options in total.

The analysis highlighted underperformance in the choice sector as well as key insights showing that administration fees for choice products are materially higher on average than they are for MySuper products; there is considerable variation in investment performance for choice investment products; and approximately 15 percent of choice products underperformed a risk-adjusted, peer-derived benchmark by more than 75 basis points compared to 7 percent of MySuper investment options.

The first Choice Product Heatmap will focus on multi-sector investment options in open accumulation products (excluding platform products), representing 40 per cent of total member benefits in the APRA-regulated choice sector.

Superannuation trustees should carefully review the Information Paper in anticipation of APRA's choice heatmap which will be published in December.



(Un)Stapling

18 October 2021
Legislation

[LINK TO DETAILS](#)

The *Superannuation Guarantee (Administration) Amendment Bill 2021* was introduced into Parliament. The Bill seeks to amend the stapling legislation under the *Superannuation Guarantee (Administration) Act* "to 'unstaple' the Superannuation [Insurance] Policies of workers when they transfer employment into a 'dangerous occupation' (defined as an occupation where the rate of death in workplace is more than 2.5 in 100,000 per year [averaged over a five-year period, as determined by the Australian Government Actuary])." The Government will be required to publish a list of occupations to which the exclusion applies.

From 1 November 2021, employees who do not exercise choice of fund will be stapled to a single default fund into which the employer must pay SG contributions.

Superannuation trustees should remain apprised of the status of this Bill.



Remuneration

18 October 2021
Prudential Guidance

[LINK TO DETAILS](#)

APRA wrote to all APRA-Regulated Entities advising of its release of final guidance – *Prudential Practice Guide CPG 511 Remuneration (CPG 511)* – to assist entities in implementing the new *Prudential Standard CPS 511 Remuneration*.

In response to submissions seeking examples of better practice, particularly applying material weight to non-financial measures in variable remuneration and meeting minimum deferral requirements, APRA has:

- updated guidance to align with the final CPS 511 requirements released in August 2021, in particular with amendments on third-party service providers, and risk and conduct adjustments;
- aligned guidance with the Government's proposed Financial Accountability Regime (FAR), including for deferral and vesting requirements; and
- provided additional examples of better practice, such as for applying material weight to non-financial measures.

The new CPS 511 requirements will apply to RSE licensee significant financial institutions (SFIs) – RSEs with over 30 billion total assets – from 1 July 2023 and non-SFIs from 1 January 2024. The requirements will not, however apply to a person's remuneration if the opportunity to earn the variable remuneration arose before the relevant commencement dates of CPS 511.

APRA is planning to release for consultation new reporting and disclosure requirements for remuneration in 2022 with plans to finalise the requirements in 2023.

Superannuation trustees should consider the finalised guidance and its impact on the implementation of the new requirements.



PMIF

21 October 2021
APRA Update

[LINK TO DETAILS](#)

APRA published an update to the frequently asked questions on the *Treasury Laws Amendment (Putting Members' Interests First) Act 2019* (PMIF).

The updated information clarifies that members who were not required to elect for insurance, such as members who provided an election before 1 November 2019 or members under 25 prior to 1 April 2020, or members with an account balance that is less than \$6000 but who had an account balance equal to or greater than \$6000 on or after 1 November 2019, can have their insurance continued in a successor fund without needing to elect for insurance.

The Government intends to amend the SIS Act to give effect to this change in due course.

The FAQ advises that where an RSE licensee of a successor fund determines that any breach of the SIS Act relates to not seeking an insurance opt-in election from a member (who had previously provided their insurance opt-in election to the transferring RSE licensee, or who was captured by the application and transition provisions of the PMIF Act) following an SFT, the RSE licensee of the successor fund should inform APRA and provide details of how it intends to apply the law, including whether it is taking into account future law changes that have been signalled by the Government.

Superannuation trustees should note the existence of the FAQ.



Member Outcomes Assessment

25 October 2021
APRA FAQ

[LINK TO DETAILS](#)

APRA published a new set of frequently asked questions (FAQs) – Questions 1-5 and an update to Question 11 on the outcomes assessment under section 52(9) of the *SIS Act*.

The new FAQs relate to:

- (1) Clarifying that RSE licensee's should consider the annual performance test when completing their annual outcomes assessment.
- (2) Where there is a change in RSE licensee, the new RSE licensee may choose to adhere to the same outcomes assessment cycle followed by the retiring licensee or adopt another cycle if it is more appropriate, however, where members are transferred in an SFT prior to the next assessment due date, the transferring licensee is not required to make and publish a determination in respect of a product that is no longer offered, rather the receiving licensee must undertake an outcomes assessment for the product to which the members were transferred.
- (3) APRA expects RSEs to use the heatmap as an additional source of data to assess relative performance.
- (4) A summary of the assessments and comparisons on which the financial interests determination is made must be published. The FAQ specifies APRA's expectations in relation to the publication.
- (5) The most recent summary that is, or will be, published must be included with the notice of the annual members' meeting.
- (11) APRA encourages RSE licensees to consider the lifecycle product-level methodology in the Your Future Your Super regulations which weights the performance in each lifecycle stage based on the value of the investments in the lifecycle stage over time.

Superannuation trustees should review the FAQs and ensure that their current practices are aligned with APRA's expectations.



Super Budget Measures

27 October 2021
Legislation

[LINK TO DETAILS](#)

The *Treasury Laws Amendment (Enhancing Superannuation Outcomes for Australians and Helping Australian Businesses Invest) Bill 2021* was introduced into Parliament.

The Bill looks to legislate the following reforms announced in the Budget:

- removal of the monthly minimum threshold for salary and wages to count towards the superannuation guarantee;
- first home super saver scheme maximum releasable amount increase from \$30,000 to \$50,000;
- reduced eligibility age for downsizer contributions to 60 and above;
- repeal of the work test for superannuation contributions for those under 75;
- segregation of current pension assets; and
- extension of temporary full expensing of depreciating assets.

Superannuation trustees should note the Bill and commence planning to update member disclosure documents and administration systems and processes to reflect the changes.



Electronic Meetings and Execution

20 October 2021
Legislation

[LINK TO DETAILS](#)

The *Corporations Amendment (Meetings and Documents) Bill 2021* was introduced into Parliament.

The Bill makes permanent changes allowing companies and registered schemes to hold hybrid meetings (which give shareholders the option of either attending in person or remotely) and use technology to execute company documents, sign meeting-related documents and provide those documents to members.

Currently, documents relating to a meeting may be signed electronically by using a method to identify the signatory and indicate the signatory's intention, and company documents executed with or without a seal may be executed using electronic means until 31 March 2022. The Bill will allow execution of documents in flexible and technology neutral manners.

Superannuation trustees should note the Bill and monitor its status.



TECHNICAL CHANGE AND UPDATES



APRA Data Project

22 October 2021
Data Standards

[LINK TO DETAILS](#)

APRA published additional FAQs to provide further guidance on the Phase 1 Superannuation Data Transformation project reporting standards.

APRA also updated: FAQ 1.01 regarding the use of excel files as a submission format; FAQ 1.02 to clarify the next reporting period due date for Reporting Standard SRS 705.1 Investment Performance and Objectives.

APRA also updated its [APRA Connect Taxonomy Artefacts page](#), publishing a new APRA connect Superannuation Taxonomy Artefacts folder and an APRA Connect – SDT Artefacts Change Log that details the changes to the taxonomy artefacts – including validation rules that have been restricted for one or more entities. The Change Log is broken into changes to: Schemas (alignment of business definitions to the reporting standard, correcting spelling mistakes and altering mandatoriness of objects); Amended validation rules (new, amended or deleted validation rules); and Rule restrictions (rules that have been restricted for a given period, entity or number of entities).

Superannuation trustees should review the additional FAQs and the Change Log.



Advice Relief

14 October 2021
Legislative Instrument

[LINK TO DETAILS](#)

ASIC made *ASIC Corporations (Amendment) Instrument 2021/848* which amends *ASIC Corporations (COVID-19-Advice-related Relief) Instrument 2021/268* to give effect to two temporary relief measures that facilitate access to timely and affordable personal advice for existing clients of providing entities that is in connection with the adverse economic effects of COVID-19. The relief allows a Record of Advice to be provided, rather than a Statement of Advice in relation to COVID-19 advice in certain circumstances.

The temporary relief measures will expire on 15 April 2022. ASIC will continue to monitor the appropriateness of the relief and if appropriate, ASIC may end the relief before the six-month period. ASIC will give sufficient notice to industry before any early repeal is implemented.

Superannuation trustees should note the extension of the relief.



Super Guarantee

22 October 2021
Legislative Instrument

[LINK TO DETAILS](#)

The ATO registered the [Superannuation Guarantee \(Administration\) – Choice of Fund – Written Guidelines for the Reduction of an Increase in an Employer's Individual Superannuation Guarantee Shortfall Determination 2021](#) (Determination 1) and [Superannuation Guarantee \(Administration\) – Stapled Fund – Guidelines for the Reduction of an Employer's Individual Superannuation Guarantee Shortfall for Late Contributions Due to Non-acceptance by Notified Stapled Fund Determination 2021](#) (Determination 2).

The Determinations commence on 1 November 2021.

The Determinations set out written guidelines the ATO must have regard to when deciding whether or not to reduce the amount of the increase in an employer's individual superannuation guarantee shortfall for an employee for a quarter under subsection 19(2E) and 19(2F) of the *Superannuation Guarantee (Administration) Act 1992*, respectively.

No further action is required from superannuation trustees.



Legislative Framework Law Reform

15 October 2021

Publications

[@LINK TO DETAILS](#)

The Australian Law Reform Commission (ALRC) has been asked to inquire into the potential simplification of laws that regulate financial services in Australia. The Terms of Reference focus on the provisions of the *Corporations Act 2001* and the *Corporations Regulations 2001*.

The ALRC has published two papers.

[Background Paper FSL2 Complexity and Legislative Design](#) explores the drivers and metrics of legislative complexity, and considers how legislative complexity can be managed and reduced through legislative design, including the drivers and metrics of complexity in corporations and financial services laws in Australia and why complexity matters to businesses, consumers, professional advisors, parliamentary drafters, and legislators.

[Background Paper FSL3 Improving the Navigability of Legislation](#) discusses the range of features and techniques that can be used to make legislation more navigable.

A first interim report focusing on the appropriate use of definitions in corporations and financial services legislation is due by 30 November 2021.

Superannuation trustees should remain apprised of the ALRC's progress.



GUIDANCE AND POLICY



APRA Annual Report

21 October 2021
APRA

[LINK TO DETAILS](#)

APRA published its 2020-22 annual report. The report summarises the following in relation to superannuation:

- APRA's prudential supervisions activities continued throughout 2020/21, with particular scrutiny given to the ongoing need to lift standards and weed out underperformers in the superannuation sector.
- Beyond COVID-19 related issues, APRA's supervisory attention focused on issues relating to strategic planning and member outcomes, outsourcing, trustee board capabilities, unlisted asset valuation and conflicts of interest.
- A major achievement during the year was publication of the enhanced MySuper Product Heatmap in December 2020.

No further action is required from superannuation trustees.



ASIC Annual Report

15 October 2021
ASIC

[LINK TO DETAILS](#)

ASIC published its 2020-21 annual report. The report summarises the following in relation to superannuation:

- Continuance of its change program that included strengthening supervision of the super sector, as ASIC works towards its expanded role as the primary conduct regulator in the sector.
- Issuance of the ASIC and APRA joint letter to trustees about how regulatory oversight will operate under the Royal Commission reforms.
- ASIC took action to deter misconduct, supported relevant legislative reforms, and continued supervision and surveillance of superannuation trustees, focusing on whether trustees act in the best interests of consumers and treat them fairly.

No further action is required from superannuation trustees.



MySuper Heatmap

6 October 2021
APRA FAQ

[LINK TO DETAILS](#)

APRA published a new set of frequently asked questions (FAQs) on the upcoming 2021 MySuper Product Heatmap, which is due to be released in December.

The heatmap will include data received by APRA by 29 October 2021 and any updated data received after this date will not be included. The next MySuper Heatmap, after the one planned to be released in December, is planned for next year – December 2022.

The heatmap will show the outcomes being delivered to MySuper members in areas of investment performance and fees and costs, and will provide indicators of trends in a trustee's operations to the sustainable delivery of member outcomes.

Superannuation trustees should ensure that all up to date data was provided to APRA by 29 October 2021.



Executive Personal Investment Activity

27 October 2021
ASIC Media Release

[LINK TO DETAILS](#)

ASIC issued a media release advising industry that it conducted surveillance into personal investment switching by directors and senior executives of superannuation trustees has identified concerns with trustees' management of conflicts of interest. ASIC looked at a sample of 23 trustees (including trustees of industry and retail funds) and focused on conduct during the time of increased market volatility arising from the COVID-19 pandemic.

ASIC's key concerns with trustees' management of conflicts of interest include:

- Failure to identify investment switching as a risk as the majority of trustees either did not identify a director or an executive having an interest in the superannuation fund for which she or he works as a 'relevant interest' (for the purposes of their conflicts management policies) or identify investment switching as giving rise to a conflict of interest.
- Disparity in board-level engagement on the issue of conflicted investment switching by directors and executives, with some boards unable to demonstrate that they had considered the issue at all.
- Lack of restrictive measures: Almost half of the trustees (10 of the 23) did not have preventative controls such as trade pre-approvals or switching blackout periods to limit executives' ability to switch investment options.
- Inadequate oversight of investment switching: Many trustees did not have mechanisms in place to regularly review switching activity by their directors and executives, including checks to ensure compliance with policies.
- Lack of oversight of related parties: A common issue was a failure by trustees to identify switching by related persons (such as a spouse) of directors and executives as giving rise to a perceived or potential conflict of interest.

Superannuation trustees should review their policies and procedures to identify gaps requiring uplift.



Distribution of super products

15 October 2021
ASIC Update

[LINK TO DETAILS](#)

ASIC released [Information Sheet 89, Communicating with employees about superannuation fund choice: what you can and cannot do](#), which provides general guidance about how employers can communicate to employees about superannuation choices without breaking the law and what employers should avoid saying or doing. This includes not giving financial product advice; not mandating, recommending or influencing employees to choose a particular superannuation fund; and not making an unsolicited offer to employees.

ASIC also updated [Information Sheet 241: Prohibition on influencing employer's superannuation fund choice](#), which provides guidance to trustees on the prohibition on using inducements to influence employers.

ASIC will conduct a thematic review of how trustees use employers to distribute superannuation products this financial year and may consider regulatory action where misconduct causing consumer harm is identified.

Superannuation trustees should, as recommended by ASIC, familiarise themselves with the guidance on both information sheets to ensure appropriate engagement with employers and employees.



Whistleblower Policies

3 October 2021
ASIC Letter

[LINK TO DETAILS](#)

ASIC wrote to CEOs to:

- Remind them of their entity's obligations under the Corporations Act to have a whistleblower policy that reflects the strengthened whistleblower protection regime that started on 1 July 2019; and
- Encourage them to check whether their entity's policy complies with the requirements.

The letter stems from ASIC's review of a sample of whistleblower policies during 2020, which found that a majority of policies reviewed appeared to not include all information required by the Corporations Act, including information about the legally enforceable protections available to whistleblowers.

ASIC observed the following deficiencies: (1) not listing all the categories of people to whom a whistleblower can report misconduct; (2) inaccurately referring to obsolete requirements for whistleblowers; and (3) omitting or inaccurately describing one or more of the protections available to whistleblowers under the Corporations Act.

Superannuation trustees should, as recommended by ASIC, review their policy to ensure it complies with the requirements, with a specific focus on those areas identified by ASIC as lacking from their review; review RG 270 Whistleblower Policies; and review other parts of its whistleblowing systems and processes.



Technology and Financial Centre

20 October 2021
Committee Report

[LINK TO DETAILS](#)

The Senate Select Committee on Australia as a Technology and Financial Centre (formerly the Senate Select Committee on Financial Technology and Regulatory Technology) tabled its final report, following two interim reports in September 2020 and April 2021.

This phase of the inquiry was focused on the regulation of cryptocurrencies and digital assets; issues relating to 'de-banking' of Australian FinTechs and other companies; the policy environment for neobanks in Australia; and options to replace the Offshore Banking Unit.

The Report makes 12 recommendations:

- Eight recommendations on how digital assets can be properly regulated in Australia in order to promote innovation and attract investment while providing appropriate safeguards for investors and consumers, which includes a market licence for the sector, custodial and depository regimes, a token mapping exercise to classify the various types of crypto-asset tokens and other digital assets being developed in the market, a new Decentralised Autonomous Organisation legal structure, a review of AML/CTF regulations and tax rules specific for digital assets.
- Recommendations related to de-banking, including the finalisation and implementation of a due diligence scheme.
- A recommendation to replace the Offshore Banking Unit regime by the end of 2022.

Superannuation trustees should note the report.



Ransomware Action Plan

18 October 2021
Plan

[LINK TO DETAILS](#)

The Department of Home Affairs released the Australian Government's Ransomware Action Plan.

The Plan includes the Australian Government launching additional operational activity to target criminals seeking to disrupt and profit from Australian businesses and individuals; and delivering additional legislative reforms to require ransomware incident reporting to the Australian Government, a stand-alone offence for all forms of cyber extortion, a stand-alone aggravated offence for cybercriminals seeking to target critical infrastructure and modernising legislation to ensure that cybercriminals are held to account for their actions (tracking and seizing or freezing abilities for ill-gotten gains).

Superannuation trustees should remain apprised of the Government's implementation of the plan, in particular any disclosure obligations that may be in addition to already existing obligations under the Prudential Standards. Trustees should also review their cyber security policies and procedures and ensure they have controls in place related to ransomware risks.



Digital ID

1 October 2021
Draft Legislation

[LINK TO DETAILS](#)

The Government released an exposure draft of the Trusted Identity Bill and related legislative instruments for public consultation.

According to the Government, the purposes of the legislation are to:

- enable the expansion of the Australian Government Digital Identity System, specifically to enable greater participation by state and territory governments and the private sector;
- enshrine in law various privacy and consumer protections, so that Australians can have confidence in the System and know that their personal information is safe and secure; and
- establish permanent governance arrangements and a strong regulatory regime.

One of the changes from the previously released position paper is the introduction of new restrictions on accessing and storing data outside Australia. Specifically, the proposed Trusted Digital Identity Rules prohibit the holding, storing or handling of digital identity information outside Australia.

Superannuation trustees should review the draft legislation and consider any impacts on its operations.



Your Future, Your Super FAQs

27 October 2021
FAQs

[LINK TO DETAILS](#)

APRA published additional FAQs on trustee-directed products. The FAQs 'provide clarity to RSE licensees on the introduction of trustee directed products (TDPs) into the Government's Your Future, Your Super performance test'.

Key items include:

- The performance test applies at the investment option level;
- The determination of whether an investment option is a TDP will depend on the particular circumstances of each individual RSE licensee;
- The performance test outcomes are specific to the RSE licensee;
- Managed investment schemes that are held through a connected entity will be classified as a TDP;
- The performance test will be calculated using data reported on Reporting Form SRS 550.0 Asset Allocation (SRS 550); and
- APRA will publish the 2022 performance test results at the end of August 2022 once the performance test has been undertaken.

Superannuation trustees should review the FAQs.



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.

[LEARN MORE ABOUT QMV LEGAL](#)

[SUBSCRIBE TO QMV LEGAL REGULATORY UPDATES](#)



SUPERANNUATION &
FINANCIAL SERVICES LAW



PRIVACY & DATA REGULATION



INFORMATION TECHNOLOGY &
ADMINISTRATION SERVICES



REGULATORY CHANGE & POLICY



SUCCESSOR FUND TRANSFERS



MANAGED INVESTMENTS & ESG

LEGAL EXPERTS ON SUBSCRIPTION

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:



David Reckenberg
LLB (Hons), B.Ec
Managing Partner
0411 265 284
dreckenberq@qmvqolutions.com



Jonathan Steffanoni
JD, BA, Dip.FS, FASFA
Partner
0434 835 966
jsteffanoni@qmvqolutions.com



Gabriela Pirana
JD, BSc.
Senior Associate
0450 814 596
gpirana@qmvqolutions.com



Jessica Pomeroy
MBA, BA
Senior Consultant
0400 708 447
jpomeroy@qmvqolutions.com