

## LEGAL, REGULATORY & POLICY UPDATE

### PENSIONS AND SUPERANNUATION

#### INSIDE THIS EDITION

- Quality of Advice Review
- Financial Advisor Education
- Financial Services Law Simplification
- MySuper Performance Test Results
- Target Market Determinations



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#### IN BRIEF

*The future of financial advice has become a little clearer, with Treasury releasing a proposals paper as part of the **Quality of Advice Review** that is currently underway. The proposals are significant, some of which are likely to be controversial.*

*The legislative agenda of **Commonwealth Parliament** got moving, with the passage and introduction of largely technical legislation.*

*The policy agenda looks anything but quiet, with reviews and draft legislation concerning **Modern Slavery, Breach Reporting, and Financial Services Law simplification**... all while the **MySuper annual performance test** results were released.*

#### MAJOR UPDATES



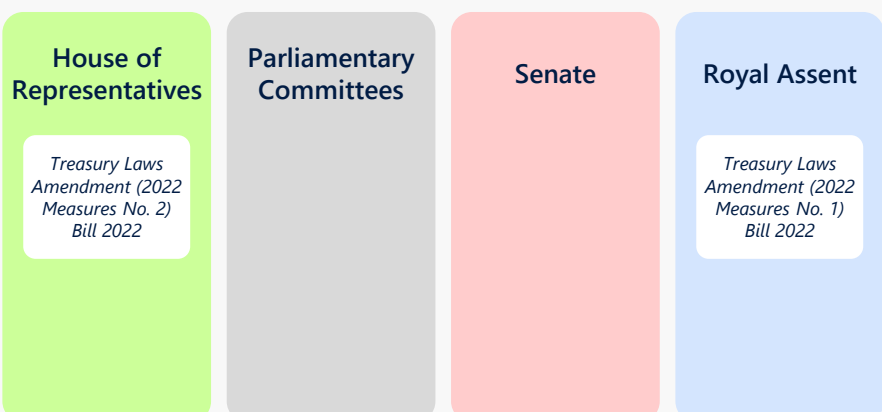
Commonwealth  
Parliament

August 2022  
*Parliamentary Business*

[LINK TO DETAILS](#)

Commonwealth Parliament sat between 1-4 August 2022. As relating to superannuation, the [Treasury Laws Amendment \(2022 Measures No. 2\) Bill 2022](#) was introduced to the House of Representatives on 3 August 2022 which seeks to reduce downsizer contribution eligibility from age 60 to age 55, fulfilling a government election promise.

Separately, the [Treasury Laws Amendment \(2022 Measures No. 1\) Bill 2022](#) received Royal Assent on 9 August 2022. As relating to superannuation, this Act will facilitate the closure and transitional arrangements associated with Australian Financial Complaints Authority (AFCA) replacing the Superannuation Complaints Tribunal (SCT). These measures were introduced under the previous government, however, were prorogued with the calling of the election.



*Superannuation trustees should note the introduction of the downsizer legislation and ensure preparedness for implementation.*



## MySuper Performance Test

31 August 2022  
Test Results

[LINK TO DETAILS](#)

APRA released the results of the second MySuper Performance Test. Overall, there were five MySuper products that failed the test, one for the first time and the remaining four for the second time.

RSE licensees who have failed the test for the second consecutive year must ensure:

- the product is closed to new members on the day following the notification, and
- Return any contributions from new members (if made after 31 August 2022).

The fund that failed the test for the first time must immediately:

- identify the causes of underperformance and develop and implement a plan to rectify this underperformance;
- Assess the potential implications of failing the test on the fund and the sustainability of business operations and
- Develop a plan to, if it becomes necessary in the best financial interests of members, close the product, transfer members to another fund/product and/or exit the industry.

Additionally, a notification must be issued to all members who hold the failing product within 28 days of being advised by APRA that the product has failed.

Separately, the ATO [announced](#) the YourSuper Comparison Tool will be updated from 1 September 2022 to reflect the Performance Test results.

*Superannuation trustees who administer a product that failed the test must ensure immediate action is taken in accordance with the instructions from APRA. Due care and consideration must be given to the contents of the notification letter to members to ensure the contents adhere to the requirements set out in the Regulations and are not misleading to members.*



## Virtual Hearings and Examinations

29 August 2022  
Exposure Draft

[LINK TO DETAILS](#)

Treasury released Exposure Draft legislation *Treasury Laws Amendment (Modernising Business Communications) Bill 2022: Virtual hearings and examinations* and associated Regulations which seek to clarify that Regulatory bodies can use technology for hearings and examinations. The current legislation underpinning regulatory hearings and examinations are largely silent on the ability to use technology in these proceedings.

The draft legislation reintroduces and largely replicates a component of the [Treasury Laws Amendment \(Modernising Business Communications\) Bill 2022](#) which was prorogued in the previous government. The proposed amendments form part of the broader initiative to modernise business communications across a range of Treasury portfolio laws.

Consultation closes 23 September 2022.

*Superannuation trustees should note the draft legislation. If passed, the changes may provide greater flexibility for any formal hearings or proceedings involving regulators.*



## Quality of Advice Review

29 August 2022  
Proposals Paper

[LINK TO DETAILS](#)

Treasury released a Proposals Paper ('the Paper') in relation to the **Quality of Advice Review** based on the feedback to the consultation undertaken earlier this year. The Paper contains 12 proposals across six key themes and proposes:

- The financial services regime should regulate **'personal advice' and the definition should be broadened** to include "at the time the advice is provided, the provider has or holds information about the client's objectives, needs or any aspect of the client's financial situation"
- **Removal of general advice definition** and the obligation to give a general advice warning; general advice would continue to be subject to general consumer protections;
- **Replace best interests duty with a requirement to provide 'good advice'** which is "advice that would be reasonably likely to benefit the client, having regard to the information that is available to the provider at the time the advice is provided";
- Narrowing the definition of **'relevant provider'**;
- **Superannuation trustees** should be able to **provide personal advice** to their members regarding their interests in the fund, taking into account the **member's personal circumstances**;
- Superannuation trustees to have **discretion on how to charge members for personal advice** and the current restrictions on collective charging of fees should be removed;
- **Advice fee** should be able to be **deducted from a member's superannuation balance** and paid to an advisor for personal advice;
- An **annual written consent required to deduct ongoing advice fees** from a financial product. A single consent form may cover multiple products;
- Replace obligation to issue a Statement of Advice or Record of Advice (ROA) with a requirement to maintain complete records of advice and **provide a ROA to a client upon request**. It would be up to the advisor to determine what form of advice is most appropriate for their client;
- Requirement for continued provision of an FSG or otherwise **make information available on the advisor website regarding remuneration and other benefits** that may be received, **IDR and AFCA** information;
- **Simplify the DDO regime for relevant providers** to only need to report to the product issuer where they have received a complaint; and
- **Adequate transition period** is required and allow **early opt-in**.

Overall, the Paper notes "...by focusing on the quality of the advice given, the law does not need to regulate or prescribe the inputs".

The closing date for submissions to the Paper is 23 September 2022. There is no intention for the release of another Proposals Paper, however opportunities for further feedback will be available.

*Superannuation trustees should review the Proposals Paper and consider whether any of the proposals may impact the trustee, and whether a response to the consultation is warranted.*



## Super Splitting

19 August 2022  
Legislation Passed

[LINK TO DETAILS](#)

The *Family Court Amendment Bill 2022 (WA)* passed Parliament and is awaiting Royal Assent. The Bill amends the *Family Court Act 1997 (WA)* to allow **superannuation to be split between separating de facto couples**, bringing Western Australia (WA) into alignment with the rest of the nation.

The long-awaited passing of the Bill follows the *Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Act 2020* which received Royal Assent in December 2020 and amended the *Family Law Act 1975* to give effect to a referral of power from Western Australia to the Commonwealth in respect of superannuation matters in family law proceedings for separating de facto couples in WA.

*Superannuation trustees should ensure that fund documentation, member information, and processes are updated to reflect this change. External administrators should ensure preparedness in administration of family law splits from WA de facto couple members.*



## Corporations and Financial Services Law Review

24 August 2022  
Exposure Draft

[LINK TO DETAILS](#)

Treasury released exposure draft legislation intended to **reduce the complexity of corporations and financial services law**, specifically targeting the *Corporations Act 2001* ('the Act'), the *Corporations Regulations 2001* and the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

The *Treasury Laws Amendment (Measures for consultation) Bill 2022: ALRC Financial Services Interim Report* exposure draft legislation is a direct consequence of the recommendations contained within the Australian Law Reform Commission (ALRC) *Interim Report A: Review of the Legislative Framework for Corporations and Financial Services Regulations*. The ALRC review is ongoing and forms part of the response to the Financial Services Royal Commission which found that the above laws needed to be simplified to ensure the intent is met.

The draft legislation proposes a number of technical amendments:

- streamlining **defined terms** by removing definitions that are not subsequently used within the Act; transferring definitions from section 9 of the Act to a more appropriate location within either the Act or the Regulations where identified; and removing definitions that do not alter the ordinary meaning of a word;
- amending the **existing definitions** and introducing a small number of new definitions;
- removing or amending references that are incorrect or redundant; and
- standardising headings to making information easier to locate.

The draft legislation forms part of the Treasury Law Improvement Program which is intended to facilitate regular improvement and maintenance opportunities for the Treasury Laws portfolio and ensure the laws remain current and fit for purpose. Feedback is sought by 20 September 2022.

*Superannuation trustees should review the proposed changes although no immediate direct impact is expected given the specific changes announced are relatively minor and not directly applicable to superannuation trustees. However, trustees should ensure they remain abreast of the ALRC review and the release of Interim Report B which is due in September 2022, as more significant changes stemming from this review are expected.*



## Rationalisation of ASIC Instruments

24 August 2022  
*Exposure Draft*

[LINK TO DETAILS](#)

The **Treasury Laws Improvement Program** also released *Treasury Laws Amendment (Measures for Consultation) Bill 2022: Rationalisation of Ending ASIC Instruments*, which proposes to transfer matters contained in ASIC legislative instruments into primary law and regulations.

This forms part of the ALRC Interim Report A review which identified the existence of class orders and other instruments that notionally amend the primary law or regulations causes complexity and undermines accessibility.

Relevant to superannuation trustees, the *ASIC Corporations (Financial Services Guide Given in a Time Critical Situation) Instrument 2022/498* is one of 5 legislative instruments that have been selected to be transferred to the Corporations Act, and *ASIC Corporations (Superannuation and Schemes: Underlying Investments) Instrument 2016/378* will be transferred to the Corporations Regulations.

Treasury also propose that when an ASIC legislative instrument is due to sunset or cease, it will be reviewed by both Treasury and ASIC to determine whether the structure and navigability of the law would be improved by moving the matters into primary legislation. Between 15 to 65 ASIC instruments are expected to sunset or cease each year until 2027.

*Superannuation trustees should note the exposure draft in the context of the broader Treasury Laws Improvement Program and remain abreast of developments in this area.*



## APRA Climate Risk Survey Results

4 August 2022  
*Information Paper*

[LINK TO DETAILS](#)

APRA released the results of a **voluntary climate risk self-assessment survey** ('the survey') undertaken between March and May 2022. The survey provided insights into the alignment of climate risk practices by medium-to-large APRA-regulated institutions with the expectations set out in *Prudential Practice Guide CPG 229 Climate Change Financial Risks* (CPG 229) which was released in November 2021. The survey responses covered **64 APRA-regulated institutions** across the banking, insurance, and superannuation industries.

Overall, APRA considers the results to indicate a reasonable level of compliance with **CPG 229**, particularly in the areas of governance and disclosure, with strong engagement by boards and senior management, and disclosure made in accordance with the recommended approach.

APRA also noted that institutions have begun embedding climate risk into elements of the **risk management framework** and **strategic planning** processes, however recognised this to be an emerging area discipline and that only a small portion of respondents had done so.

APRA also identified areas for improvements, specifically calling out metrics and targets and that "**use of more advanced quantitative risk metrics** such as scope 3 and financed emissions, and forward-looking exposure to physical and transition risk, was limited".

*Superannuation trustees should ensure climate risk has been embedded within the trustee's internal policies relating to risk, governance and disclosure. Consideration should also be given to how climate-risk is measured and whether improvements to the quality of the underlying data can be improved in accordance with the suggestions put forth by APRA.*



## Financial Advisor Education Standards

23 August 2022  
*Consultation*

[LINK TO DETAILS](#)

Treasury released a consultation paper seeking feedback on amending the financial adviser education standards for both existing advisers and new entrants. The consultation closes on 16 September 2022.

The consultation proposes to introduce a **new 'experienced advisor' education pathway** by removing the existing formal education requirements for advisers who (1) passed the mandated exam, (2) have 10 years of experience covering the years 2004 to 2019; and (3) have a clean record of financial practice.

Amendments are also proposed to the new entrant pathway, specifically:

- reduce the number of **core knowledge areas from 11 to 5** that must be addressed within the approved degree completed by the adviser;
- enable education providers to **self-declare** that their course teaches each of the 5 core knowledge areas and provide the Government assurance of this; and
- review alternative and flexible arrangements for **undertaking the 'professional year'** of study by advisers, including the timing of completion of the exam, integration of the professional year into tertiary study or introducing a principles-based approach to the professional year and remove the more prescriptive elements of the requirements.

The 5 core knowledge areas proposed are (1) taxation law, (2) commercial law, (3) financial advice regulatory and legal obligations, (4) ethics and professionalism, and (5) behavioural finance and client engagement.

The release of the consultation follows an announcement by the Government of a review of a range of financial advice standards that currently apply, including a Code of Ethics consultation which is expected to be released in 2023 after the government has considered its response to the Quality of Advice review.

Additionally, Treasury will be tasked with reviewing the delivery of the financial advice exam and identifying any potential improvements in the delivery of the exam, with the government suggesting the number of questions may be reduced.

*Superannuation trustees should note the announcement and consider whether to submit a response to the consultation. Consideration may be given to the Quality of Advice Proposals Paper within the response.*



## ASIC Breach Reporting Review

10 August 2022  
Announcement

[LINK TO DETAILS](#)

ASIC announced that, as part of its 2022-23 priorities, it will focus on improving the operation of the reportable situations regime that was introduced on 1 October 2021.

ASIC acknowledged that licensees had encountered challenges in the implementation of the regime. ASIC has committed to working with these licensees to understand the issues that may be contributing to an unnecessary compliance burden on the industry.

Additionally, ASIC will communicate clear expectations for compliance and design solutions to ensure consistency and quality of reporting.

The announcement pre-empts ASIC's first annual public report on the regime which will utilise breach reporting information submitted to ASIC by licensees. The report is due to be published in October 2022 and will include high-level insights into trends observed between 1 October 2021 and 30 June 2022.

*Superannuation trustees should note the announcement and remain abreast of any developments and further expectation setting by ASIC.*



## Internal Dispute Resolution Review

10 August 2022  
Review

[LINK TO DETAILS](#)

ASIC released the results of the first stage of surveillance activities undertaken to review trustee's implementation of the internal dispute resolution (IDR) requirements that took effect on 5 October 2021.

ASIC found indicators of 'significant compliance issues' in relation to trustee implementation of the reforms and adherence to the enforceable requirements within *Regulatory Guide 271 Internal Dispute Resolution* (RG 271). Observations include:

- **recording of complaints:** 10% of trustees surveyed recorded less than 10 complaints for every 10,000 members (compared with an average of 30 complaints per 10,000 members overall), giving rise to concerns that not all complaints are being recorded as is required;
- **response timeframes:** 7 of the 38 funds reviewed sent an IDR response outside of the 45-day maximum time period, giving rise to concerns of insufficient monitoring of timeframes or an over-reliance on the limited exceptions that may apply to this maximum timeframe;
- **informing of delays:** almost 50% of complainants were not notified of delays or their right to go to AFCA if a written response was not sent within 45 days;
- **process failures:** One third of trustees reported identifying process failures within IDR systems, resulting in incorrectly identifying or capturing complaints, omitting mandatory content in IDR response letters or failing to send a response at all.

The second stage of the surveillance will see ASIC further review how the same trustees are addressing the concerns identified. The outcomes of this second stage review will be communicated and ASIC will consider regulatory action where appropriate.

*Superannuation trustees should consider the findings and ensure current IDR processes adhere to the obligations in RG 271. Consideration should be given both to internal trustee processes and those that may be performed by an external administrator.*



## GUIDANCE AND POLICY



### Modern Slavery Act

22 August 2022  
Media Release

[LINK TO DETAILS](#)

The Attorney-General released for public consultation an issues paper on the effectiveness of the first three years of the *Modern Slavery Act 2018*. The terms of reference require the review to consider and report on:

- the operation of the Act and any rules over the 3 year period after the Act's commencement and compliance with the Act over that period;
- whether additional measures to improve compliance with the Act are necessary or desirable, such as civil penalties for failure to comply;
- whether a further review of the Act should be undertaken, and if so, when;
- whether it is necessary or desirable to do anything else to improve the operation of the Act and any rules; and
- whether the Act should be amended to implement review recommendations.

Consultation closes on 22 November 2022. The review will be completed by 31 March 2023, followed by a final report to be tabled in Parliament.

*Superannuation trustees should note the review and consider submitting a response if warranted.*



### Target Market Determinations

29 August 2022  
Announcement

[LINK TO DETAILS](#)

ASIC is calling on superannuation trustees to review and improve the effectiveness of target market determinations (TMD) for their products, after a sample review of trustee compliance found some poor practices.

ASIC reviewed 55 TMDs across 27 superannuation trustees and made the following observations and recommendations:

- **Defining target markets:** although all TMDs reviewed described target markets, some were not clearly defined; ASIC recommends using specific parameters to define the target market and/or potential target market against the relevant product; clearly articulate the differences between products where multiple products may apply to the TMD.
- **Describing investment sub-markets:** investment sub-markets should be specific and comparable; quantifiable investment objectives or identifiable benchmarks and commonly adopted measures (e.g. the Standard Risk Measure) should be used; minimum timeframes should be expressed in years.
- **Setting review triggers:** specifically define when a review of the TMD would be triggered; consider how insights from the member outcomes assessment may be incorporated into review triggers.
- **Setting review periods:** more attention should be given to ongoing review periods, and not only the initial review period; trustees should use annual review periods to utilise member outcomes insights.
- **Distributor complaint handling:** complaint reporting by distributors in relation to the product should occur on a regular basis.

Overall, ASIC noted trustees should regularly review TMDs and not employ a 'set and forget' approach.

*Superannuation trustees should review their own TMDs and associated policies and procedures to ensure alignment with the feedback from ASIC.*





## APRA Phase 2 Discussion Response Paper

29 August 2022  
*Response Paper*

[LINK TO DETAILS](#)

APRA released its response to the Phase 2 Discussion Paper which was originally released in April 2022 for consultation. The consultation sought feedback on the proposed approach, scope and timetable for introducing further enhancements to APRA's superannuation data collections as part of Phase 2 of the multi-year Superannuation Data Transformation (SDT) Program.

Based on the feedback received, APRA will bring forward some aspects of Phase 3 (Quality) that relate to Phase 1 reporting standards to improve current practices. APRA will also release for consultation minor amendments to Phase 1 reporting standards in September 2022.

As a result of the prioritisation of Phase 1 minor amendments, informal engagement on Phase 2 will begin in September, with the first formal consultation delayed until February 2023.

Additionally, APRA has reviewed the sequencing to prioritise the migration of the pre-SDT reporting standards to fulfill their commitment that the superannuation industry will not have to report using D2A by 2025.

APRA proposes the below timeline for consultation on Phase 2:

- March 2023 to April 2023: RSE licensee profile, RSE profile and Investments;
- May 2023 to June 2023: RSE licensee operations, Governance, Financial data and Non-financial risk;
- Oct 2023 to Dec 2023: Membership, Insurance and Defined benefits;
- March 2024 to April 2024: Disclosure and Retirement income strategy.

APRA is encouraging RSE licensees to engage throughout the consultation and implementation process and will shortly be commencing a range of engagement forums, including a strategic stakeholder forum for senior decision-makers and industry working groups for each topic.

*Superannuation trustees should review APRA's response to the consultation and review the engagement and implementation plan for Phase 2 of the SDT program. Consideration should be given to participating in the various forums and working groups, as well as the upcoming consultations regarding Phase 1.*



## ATO Tax Practitioner Audit Report

15 August 2022  
Report

[LINK TO DETAILS](#)

The Australian National Audit Office (ANAO) found the ATO to be largely effective in implementing its tax practitioner engagement activities and provides largely effective services and support for tax practitioners within the release of their report *Australian Taxation Office's Engagement with Tax Practitioners*. The objective of the audit was to assess the effectiveness of the ATO's engagement with tax practitioners in achieving efficient and effective taxation and superannuation systems.

Four recommendations were included within the report for the ATO, all of which the ATO agreed to:

- clearly link strategies to its tax practitioner engagement objectives and better communicate its strategic engagement approach;
- develop a performance framework for assessing its performance in engaging with tax practitioners to achieve efficient and effective taxation and superannuation systems;
- document selection criteria to support transparency, consistency and diversity in selection of tax practitioners for standing and special purpose consultation groups; and
- consult with tax practitioners to better understand their concerns regarding the registered agent phone line and use this feedback to guide the development of future service offerings.

*Superannuation trustees should note the report.*



## Financial Regulator Assessment Authority Report on ASIC

25 August 2022  
Report

[LINK TO DETAILS](#)

The Financial Regulator Assessment Authority (FRAA) tabled its report *Effectiveness and Capability Review of the Australian Securities and Investments Commission* to the Senate. The FRAA is required to assess and report on the effectiveness and capability of the regulators on a biennial basis and table the report in Parliament.

The FRAA considers ASIC to generally be effective and capable in the areas reviewed, however opportunities for improvement by ASIC are reflected in four key recommendations:

- a substantial uplift is required in ASIC's data and technology capability, which will involve cultural change;
- a stronger focus is required across the organisation on enhancing the quality of ASIC's engagement with stakeholders;
- ASIC's ability to measure its own effectiveness and capability should be enhanced and the outcomes of the assessment communicated transparently, both internally and externally; and
- ASIC should continue to broaden its mix of skillsets to ensure it can meet the current and future needs of the organisation.

ASIC published a response to the report, acknowledging the recommendations made and confirming these recommendations align with the 2022-26 Corporate Plan.

*Superannuation trustees should note the report and ASIC's priorities.*



## Innovative Retirement Product Cross-Agency Process

2 August 2022  
Announcement

[LINK TO DETAILS](#)

A new cross-agency process for innovative retirement income stream products has been introduced between the ATO, ASIC, APRA and the Department of Human Services (DHS). This service is intended to be a streamlined way for product providers to raise topics or issues arising from certain innovative retirement income stream products with the government agencies responsible for regulating these products and the entities that provide them.

The aims of the cross-agency process are to:

- facilitate engagement by providing a single-entry point to initiate contact with the relevant government agencies; and
- allow product providers to test concepts, seek information and high-level guidance on topics or issues and provide their view on how the product meets legislative requirements.

Importantly, the cross-agency process is intended to complement existing processes within individual agencies and not intended to replace or override existing arrangements.

*Superannuation trustees should note the new process if considering introducing an innovative retirement income stream product in future.*



## APRA Corporate Plan

8 August 2022  
Announcement

[LINK TO DETAILS](#)

APRA published its updated Corporate Plan 2022-2023 to reinforce the soundness of the banking, insurance and superannuation industries over the next four years. The continuing themes of “protecting the community today” and “prepared for tomorrow” form the foundation of the Plan.

APRA plans to:

- Preserve the financial and operational resilience of banks, insurers and superannuation funds;
- Build upon momentum to modernise the prudential architecture to ensure it remains fit for purpose;
- Better enable data-driven decision-making by APRA’s stakeholders;
- Increase focus on the evolving financial landscape and the impact of new financial entrants and participants;
- Help find solutions to a range of challenges, including retirement income products, retirement income longevity solutions and climate change financial risks; and
- Adopt the latest regulatory tools, techniques and practices.

*Superannuation trustees should note the update.*



## ATO Corporate Plan

17 August 2022  
Publication

[LINK TO DETAILS](#)

The ATO published its 2022-23 Corporate Plan which highlights seven key focus areas of strategic importance and another 19 core priorities essential to the ATO's vision of being a leading tax, superannuation and registry administration.

Specifically related to superannuation, the Plan outlines the intention to further expand the use of Single Touch Payroll (STP) data to simplify employer reporting obligations and address superannuation guarantee non-compliance. The key deliverables associated with this are:

- Introduce new services enabling employers to validate and adjust PAYG withholding amounts reported through STP from within their software;
- Make use of STP data to pre-fill withholding fields in activity statements and support employers to meet their PAYG withholding obligations; and
- Create a transparent view of employees' SG for all funds and all employers in one place to allow the ATO to follow up employer non-compliance more proactively.

The ATO has also noted a continuing commitment to managing cybersecurity and transition to a new data centre to both safeguard ATO-held data and deliver contemporary infrastructure platforms to support business systems.

*Superannuation trustees should note the plan and remain abreast of the initiatives announced by the ATO. Employer-facing teams should be made aware of the intended enhancements to the STP program to ensure employers remain supported within any changes introduced.*



## ASIC Industry Funding Model

8 August 2022  
Terms of Reference

[LINK TO DETAILS](#)

The Government issued the Terms of Reference (ToR) to guide a review of the ASIC Industry Funding Model (IFM). The review, to be led by Treasury, will be forward looking and focused on identifying refinements to the IFM that may be required to ensure its settings remain appropriate.

The ToR requires the review to consider and make recommendations regarding:

- The types of costs and nature of ASIC's activities that are recovered from industry, how those costs are recovered and who they are recovered from;
- How ASIC allocates costs to sub-sectors with a focus on regulatory activity that impacts multiple sub-sectors;
- Changes in levy amounts since the commencement of the IFM;
- Whether key aspects of the design and legislative framework for the IFM remain appropriate, including in light of structural changes in parts of industry;
- The flexibility of the IFM to respond to changes in industry, including emerging industry sectors; and
- The suitability of transparency and consultation mechanisms, including the Cost Recovery Implementation Statement (CRIS), and how ASIC could improve the accuracy of its estimates of costs to sub-sectors.

The review will be open for public consultation later in the year.

*Superannuation trustees should note the upcoming review.*



## ASIC Priorities 2022-26

22 August 2022  
Media Release

[LINK TO DETAILS](#)

ASIC released its Corporate Plan which outlines its strategic priorities for the 2022-26 years and its plan of action for the year ahead.

The four external priorities are:

- **Product design and distribution:** reduce risk of harm to consumers through poor product design, distribution and marketing;
- **Sustainable finance:** support market integrity through proactive supervision and enforcement of governance, transparency and disclosure standards in relation to sustainable finance;
- **Retirement decision making:** protect consumers as they plan and make decisions in relation to retirement; and
- **Technology risks:** focus on impacts of technology on financial markets and services, drive good cyber-risk and operational resilience practices and address digital misconduct and scams.

ASIC also identified several supporting activities, including core strategic projects that are focused on sustainable finance practices, crypto-assets, scams, cyber and operational resilience, breach reporting, design and distribution obligations and, subject to the passage of legislation, the Financial Accountability Regime.

*Superannuation trustees should note the update.*

## ENFORCEMENT ACTIVITY



## MobiSuper

29 August 2022  
Court Order

[LINK TO DETAILS](#)

The Federal Court ordered MobiSuper Pty Ltd (MobiSuper) and ZIB Financial Pty Limited (ZIB), MobiSuper's financial services licensee, to pay combined penalties of \$250,000 for failures in relation to the promotion of the MobiSuper Fund.

The orders relate to conduct undertaken by MobiSuper to telephone customers and offer to search for lost superannuation held by the ATO.

The Court found, in the telephone calls, MobiSuper:

- Provided personal advice without acting in the best interests of those consumers; and
- Failed to warn customers that the advice provided was based on incomplete or inaccurate information.

The Court also found MobiSuper:

- made misleading claims that consumers could save fees by opening an account with the MobiSuper Fund and consolidating or rolling over their superannuation into the account; and
- failed to provide any Statements of Advice to consumers as required by law.

ZIB has been ordered to pay a penalty for MobiSuper's failures and for ZIB's failure to **take reasonable steps** to ensure that those failures did not occur. The Federal Court also found that ZIB did not comply with its obligation to ensure that the financial services covered by its licence, as provided by MobiSuper, were provided **efficiently, honestly and fairly**.

*Superannuation trustees should note the order and ensure any representations made to members does not constitute personal advice.*



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