

LEGAL, REGULATORY & POLICY UPDATE

PENSIONS AND SUPERANNUATION

INSIDE THIS EDITION

- RECOVERY & EXIT PLANNING
- MYSUPER HEATMAP
- COMPLAINT HANDLING
- CLAIMS HANDLING
- ENFORCEMENT ACTIVITY



Gabriela Pirana
Senior Associate

IN BRIEF

Happy New Year! As 2022 came to a close, key superannuation-related bills remained before Parliament, including the **Financial Accountability Regime Bill**.

The regulators also remained active until a slight reprieve for the holidays. APRA issued the **MySuper Heatmap** and final **prudential standard on recovery and exit planning**. ASIC issued infringement notices related to **greenwashing**, filed its first civil penalty proceeding alleging contraventions of the **design and distribution obligations** and issued a report on **complaints handling**. AUSTRAC issued guidance on **compliance reporting** and **non-standard identification**.

We also saw progress related to **climate-related financial disclosure** with Government seeking views on the design and implementation of standardised, internationally aligned requirement.



COMMONWEALTH PARLIAMENT



Superannuation Bills

December 2022
Parliamentary Business

[LINK TO DETAILS](#)

Status key

- House of Reps.
- Committee
- Senate
- Royal assent

The final **Commonwealth Parliament** sittings for the year concluded, with the following superannuation related bills remaining before the House of Representatives:

- [Treasury Laws Amendment \(Modernising Business Communications and Other Measures\) Bill 2022](#)
- [Treasury Laws Amendment \(Consumer Data Right\) Bill 2022](#)

Several bills remain before the Senate, most importantly the bills related to the **FAR** and **CSLR** which will be the subject of further consultation:

- [Financial Accountability Regime Bill 2022](#)
- [Financial Services Compensation Scheme of Last Resort Levy Bill 2022](#)
- [Financial Services Compensation Scheme of Last Resort Levy \(Collection\) Bill 2022](#)
- [Treasury Laws Amendment \(2022 Measures No. 4\) Bill 2022](#)

The first sittings of Parliament for 2023 are scheduled to commence on **Monday 6 February**, and both houses are planned to sit for three weeks in March.



MAJOR UPDATES



Prudential Standard CPS190 Recovery & Exit Planning

1 December 2022
Determination

[LINK TO DETAILS](#)

APRA released its final Prudential Standard CPS 190 **Recovery and Exit Planning**, aimed at reinforcing the resilience of the financial system. The draft version of the standard was described as Financial Contingency Planning.

The key obligations under the new standard include:

- Developing, testing, and resourcing a **Recovery & Exit Plan**;
- Inclusion of **credible action plans** to restore financial resilience; and
- Integration with the trustee's **Business Performance Review and Risk Management Framework**.

There are also additional obligations of superannuation trustees with more than \$30 billion in assets (Significant Financial Institutions), including:

- **Scenario analysis** that addresses at least two scenarios severe enough to threaten the viability of the entity; and
- **Detailed planning for implementing actions** required under each scenario; and
- Assessment of **impact on liquidity** of the RSE Licensee and RSE.

The new standard will come into effect on 1 January 2025 for superannuation trustees.

Superannuation trustees should commence adopting initial steps to develop a Recovery & Exit Plan, which should be integrated within the Risk Management Framework and Business Performance Review. There will be benefits in utilising the transition period to refine the plan before the standard commences for superannuation trustees.



Prudential Standard SPS310 Audit & Related Matters

5 December 2022
Determination

[LINK TO DETAILS](#)

APRA released an updated version of Prudential Standard SPS 310 **Audit & Related Matters**. The updated version addresses changes to the Superannuation Reporting Standards resulting from APRA's Superannuation Data Transformation Project, specifically:

- Removing audit requirements related to revoked APRA Superannuation Reporting Standards (SRS 330.2, SRS 530.0, SRS 531.0, SRS 540.0, SRS 703.0);
- Adding audit requirements for new Superannuation Reporting Standards and Forms (SRS 706.0, SRF 550.1, SRS 550.0); and
- amending provisions relating to access to merit review and the exercise of APRA's discretion to ensure consistency with equivalent provisions in other recently updated prudential standards.

The new standard will come into effect on **30 June 2023**.

Superannuation trustees should engage with auditors to ensure that the scope of future engagements is appropriately defined to include the relevant reporting standards and forms. The minor change in relation to the description of APRA's discretionary powers and merit review should be noted to legal, regulatory, and compliance functions.



Corporations & Financial Services Law Reform

12 December 2022
Exposure draft legislation

[LINK TO DETAILS](#)

Treasury released exposure draft legislation that would implement recommendations from the **Australian Law Reform Commission's** interim report on its inquiry into the **Legislative Framework for Corporations and Financial Services Regulation**.

The key changes proposed are largely technical in nature, and include:

- create a single glossary of defined terms in section 9 of the *Corporations Act 2001*;
- 'unfreeze' the *Acts Interpretation Act 1901* as it applies to the *Corporations Act* and *Australian Securities and Investments Commission Act 2001* so the most current version applies to both Acts;
- repeal definitions that are no longer used, cross-references to repealed provisions and other redundant provisions;
- amend the law to address unclear or incorrect provisions; and
- simplify unnecessarily complex provisions, with a particular focus on terms defined as having more than one meaning and definitions containing substantive obligations.

Consultation is open until **15 January 2023**, and the bill is expected to be introduced to Parliament in the Autumn sittings.

Superannuation trustees should ensure that the legal and compliance function are aware of the changes, as some references to the financial services law in compliance management systems may need to be amended.



APRA MySuper Heatmap 2022

15 December 2022
Publication

[LINK TO DETAILS](#)

APRA has published its **2022 MySuper Heatmap**, evaluating MySuper superannuation product performance in the areas of investment returns, fees and costs and long-term sustainability of member outcomes.

The Heatmap also includes each product's result under the **Annual Performance Test** and is accompanied by an **Insights Paper** and **Methodology Paper**.

APRA had been expected to also publish a heatmap for choice products, but this has been deferred until early 2023.

Superannuation trustees should review the heatmap and consider any heat markers that are relevant to their fund. The publication is also likely to be useful for the purpose of benchmarking performance and the next Annual Performance Assessment.



Financial Advisers Register

16 December 2022
Regulations made

[LINK TO DETAILS](#)

ASIC has made the *Corporations Amendment (Registration of Relevant Providers) Regulations 2022*, which amends the *Corporations Regulations 2001* to delay the requirement for financial services licensees to **register financial advisers** on the Financial Advisers Register (FAR) for **six months** to 1 July 2023.

ASIC announced that the delay will allow **extra time for amendments** to be made that will improve the operation of the stage one registration process with benefits for licensees and financial advisers.

Superannuation trustees holding an Australian Financial Services Licence that covers personal financial advice should note the revised commencement date. Consideration should also be given to ensuring that any employees who might operate under a third-party license are aware of the deferral.



GUIDANCE AND POLICY



APRA Direction for Data Collections

1 December 2022
Consultation

[LINK TO DETAILS](#)

APRA released a response paper following consultation on Discussion Paper, *APRA's Direction for data collections* in March 2022.

The response paper addresses stakeholder feedback that was provided during the consultation and identifies several changes that APRA intends to adopt in relation to its data collection activities. The key commitments from APRA include:

- providing more **detailed roadmaps** for the intended design and implementation of new collections for each industry;
- working with industry to develop a targeted framework that supports **data quality outcomes** for more granular collections;
- continuing working with all industries through **strategic and technical working groups** to support planning, design, and implementation of the future collection roadmaps, and taking a co-design approach to the design of collections.

APRA also emphasised the expectation that a well-managed entity would invest significantly in improving data risk management, data capabilities and systems.

Superannuation trustees should consider how these commitments may impact the Superannuation Data Transformation Project and assess whether the organisational capability and capacity is adequate to satisfy APRA's expectations in relation to data risk management and reporting.



ASIC Self-managed Superannuation Fund advice guidance

8 December 2022
Updated Guidance

[LINK TO DETAILS](#)

ASIC has updated its guidance on the **provision of self-managed superannuation funds (SMSF) advice** with the publication of *Information Sheet 274 Tips for giving self-managed superannuation fund advice (INFO 274)*.

The information sheet is intended to assist AFS licensees and their representatives to comply with their obligations when providing personal advice about SMSFs.

Significantly, the updated guidance:

- highlights **SMSF related risks** and the importance of seeking professional advice;
- ensuring **comparisons** about SMSFs and APRA regulated funds remain relevant and up to date;
- **removing guidance about a minimum balance** for an SMSF reflecting that balance alone is not the driving indicator of suitability; and
- **consolidation** of existing guidance in INFO 205 and INFO 206.

The removal of the guidance in relation to minimum balances as an indicator of suitability may be relevant for superannuation trustees to consider as part of their strategic and business planning activities.



Complaints Handling

9 December 2022
Media Release

[LINK TO DETAILS](#)

ASIC released Report 751 *Disputes and deficiencies: A review of complaints handling by superannuation trustees* ([REP 751](#)), which outlines ASIC's findings on compliance by a selection of trustees with the obligations in Regulatory Guide 271 *Internal dispute resolution* ([RG 271](#)).

The report states that **some superannuation trustees had sub-standard arrangements** for managing complaints. The review initially included 35 trustees, followed by a more detailed review of a subset of 10. The key concerns raised in ASIC's report include:

- failure to issue **written responses** within the prescribed timeframes;
- failure to ensure all complainants were **kept informed** when their response to the complaints exceeded the maximum timeframe;
- **omission of mandatory content** related to a consumer's right to take their complaint to AFCA;
- gaps in how trustees manage **systemic issues** that could be identified through member complaints or how they used intelligence from complaints to improve their products and services; and
- internal reporting often **lacked sufficient detail** to identify, much less remedy, deficiencies in complaint handling.

Superannuation trustees should review the key concerns raised in ASIC's report against existing internal dispute resolution framework and practices. Any deficiencies should be identified and remedied.



FSC Claims Handling Standard

13 December 2022
Standard made

[LINK TO DETAILS](#)

The Financial Services Council (FSC) has released an enforceable standard for **handling group life insurance claims** in superannuation. The new standard replaces existing voluntary guidance and sets out the minimum level of service to be provided by a superannuation trustee when handling a group life insured benefit claim.

The Standard **applies to FSC superannuation members** who are trustees holding a public offer or extended public offer license to operate an APRA regulated superannuation fund.

It will commence operation on **1 January 2023** on a voluntary compliance basis, with full mandatory compliance to commence from **1 July 2023** in line with the mandatory commencement date of and to complement the protections in a new *Life Insurance Code of Practice*.

Superannuation trustees that will be required to comply with the new standard should review existing claim handling policies and procedures in order to identify any changes which may be necessary while compliance remains voluntary. The standard may also be a valuable guide to superannuation trustees that are not FSC members.



AML/CTF Compliance Report

12 December 2022
Guidance

[LINK TO DETAILS](#)

To help entities complete and lodge their **2022 AML/CTF compliance reports**, AUSTRAC released three top tips.

- Ensure outsourced AML/CTF functions are tailored to your business.
- Use a strong transaction monitoring program to detect suspicious activity.
- Take AUSTRAC's guidance and feedback into account.

Superannuation trustees should review AUSTRAC's guidance before completing their annual AML/CTF reviews, risk assessments and compliance report.



Climate-related financial disclosure

12 December 2022
Consultation

[LINK TO DETAILS](#)

The Government released a consultation paper seeking initial views on key considerations for the **design and implementation of standardised, internationally aligned requirements for disclosure of climate-related financial risks and opportunities in Australia**. Feedback is also sought on the necessary changes to ensure Australia's financial reporting bodies can keep pace with the expansion of international-setting priorities on climate and sustainability reporting.

The questions posed relate to costs, whether a phased approach should be adopted, which entities should be mandated to comply, the extent of alignment with global baselines and other key considerations.

Superannuation trustees should review the paper and consider providing a response (whether individually or through an industry organisation) as the reporting requirements are expected to impact superannuation funds.



APRA Superannuation Data Transformation Strategic Forum

9 December 2022
Media Release

[LINK TO DETAILS](#)

APRA released the notes of the first **Superannuation Data Transformation Strategic Forum** held on 22 November 2022. The forum was an opportunity for industry stakeholders to contribute to the understanding and resolution of APRA's and industry's challenges for the implementation of and transition to the new superannuation data collections.

Industry representatives at the forum raised the following concerns in relation to the Superannuation Data Transformation Project:

- forward commitment to **project timelines** is essential to enable entities to prepare and secure resourcing to implement the changes; and
- the importance of APRA adhering to the **planned blackout period** during the peak year-end reporting time to ensure industry has capacity to engage effectively with consultations.

The next forum will be held on 14 February 2023 from 2-3pm AEDT.

Superannuation trustees should continue to remain engaged in the strategic forum and provide practical feedback to APRA in relation to the impact of the Superannuation Data Transformation Project on trustee resources.



AML-CTF Non-standard Identification

19 December 2022
Guidance issued

[LINK TO DETAILS](#)

AUSTRAC released guidance on **assisting customers who do not have standard forms of identification** for financial service providers that have customer groups that may face barriers in meeting standard requirements for customer identification.

The Guidance provides alternatives to ensure that vulnerable groups are not excluded from accessing essential financial services. The guidance:

- **Outlines the difficulties** faced by some customers in accessing standard identification documents;
- Sets out a risk-based approach of **alternative identification**;
- Contains a **list** of suggested alternative identification options;
- Sets out the **assessment criteria** to determine the validity of provided statements; and
- Provides a list of individuals who can provide a **referee statement**.

Superannuation trustees should consider the guidance and update relevant policies and procedures to provide flexibility around customer identification for identified vulnerable customer groups.



TECHNICAL AMENDMENTS



Rationalising ASIC Instruments

19 December 2022
Regulations made

[LINK TO DETAILS](#)

Treasury made the *Treasury Laws Amendment (Rationalising ASIC Instruments) Regulations 2022*, which implements a recommendation of the **Australian Law Reform Commission** of integrating substantive law in legislative instruments into the relevant regulations.

The regulations include one measure that is relevant to superannuation trustees, moving into the *Corporations Regulations 2001* an existing exemption that provides **ongoing relief to a superannuation trustee for dealing in a financial product** (other than an interest in the entity) in the ordinary course of operation of the entity.

There is **no substantive change** to the law, however, the change makes the law more accessible.

Superannuation trustees should ensure that the legal and compliance function are aware of the changes, as some references to the financial services law in compliance management systems may need to be amended.



Miscellaneous & Technical Amendments

12 December 2022
Legislative Instrument

[LINK TO DETAILS](#)

Treasury made the *Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2022*. The regulations make **technical changes to correct errors and unintended outcomes**, and otherwise improve the quality of Treasury portfolio legislation, some changes with relevance to superannuation.

The regulations have been amended to prescribe:

- matters that must be satisfied before the Commissioner of Taxation can **pay amounts of ATO held superannuation to a KiwiSaver provider**; and
- the **public sector superannuation schemes** that can voluntarily pay unclaimed superannuation to the ATO.

The amendments were part of a consultation package from September 2022. Several other measures from that package are included in the [Treasury Laws Amendment \(Modernising Business Communications and Other Measures\) Bill 2022](#), which is currently before Parliament.

Superannuation trustees of public sector superannuation schemes should review any policies and procedures in relation to payment of unclaimed superannuation to the ATO.



ENFORCEMENT ACTIVITY



ASIC v Vanguard Investments Australia

3 November 2022
Infringement Notices

[LINK TO DETAILS](#)

ASIC has issued three infringement notices to Vanguard Investments Australia Ltd (Vanguard) in action against alleged **greenwashing**.

ASIC was concerned that Product Disclosure Statements for the Vanguard International Shares Select Exclusions Index Funds **may mislead the public by overstating an exclusion**, otherwise known as an investment screen, claimed to prevent investment in companies involved in significant tobacco sales.

The Vanguard Funds were structured to exclude certain investments in tobacco, however, while this screen applied to exclude manufacturers of cigarettes and other tobacco products, it did not exclude companies involved in the **sale of tobacco products**. The relevant representations in Product Disclosure Statements were amended on 19 May 2022.

Superannuation trustees should note ASIC's focus on greenwashing related enforcement and consider ASIC's guidance in [INFO 271](#) concerning Greenwashing in investments when making and maintaining public disclosures and representations.



ASIC v American Express Australia

6 December 2022
Civil Penalty Proceedings

[LINK TO DETAILS](#)

ASIC has commenced proceedings in the Federal Court against American Express Australia Limited (Amex), in ASIC's first civil penalty case alleging breaches of **design and distribution** obligations.

Under the design and distribution obligations, Amex was required to make a **target market determination (TMD)** describing who certain credit cards would be appropriate for and how the cards should be distributed.

ASIC alleges that the TMDs issued by Amex **did not limit distribution** to people looking to make purchases on credit with a card that earned points or other benefits. ASIC also alleges that Amex was aware that the product features carried **significantly higher fees** than other Amex credit card products, and knew some **consumers were confused** about whether they had applied for a loyalty card or a credit card.

Superannuation trustees should note the proceedings and ensure that robust frameworks are in place and operating effectively to ensure that design and distribution obligations are being satisfied for relevant financial products.



Former Statewide Super Executives charged

12 December 2022
Criminal Proceedings

[LINK TO DETAILS](#)

Two former senior Statewide Superannuation Pty Ltd executives were charged with **dishonesty offences** related to procurement between February and December 2019.

ASIC alleges that former Statewide Chief Financial Officer dishonestly used his position in the **procurement of a firm** to provide services to Statewide. ASIC also alleges that the former Chief Risk Officer dishonestly used his position regarding a review he conducted connected to the **appointment of the firm** to deliver services to Statewide.

The accused appeared before Court on 9 December 2022, charged with **using their positions dishonestly for the benefit of another**, contrary to s184(2)(a) and (b) of the *Corporations Act*.

The charges highlight the importance of ensuring that outsourcing, procurement, and service provider management frameworks are robust and the subject of regular attention. Directors and officers should also ensure that they are aware of their responsibilities under the Corporations Act.



ABOUT QMV LEGAL

QMV Legal is committed to assisting superannuation trustees and their members achieve the best retirement outcomes through good governance, timely regulatory compliance, and pragmatic legal advice.

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](#)



SUPERANNUATION & FINANCIAL SERVICES



GOVERNANCE & TRUSTEE DUTIES



REGULATORY CHANGE & COMPLIANCE



CONTRACTS & TENDER MANAGEMENT



DISCLOSURE & COMMUNICATIONS



MANAGED INVESTMENTS & ESG

FLEXIBLE LEGAL COUNSEL

QMV Legal provides an innovative legal and regulatory **flexible legal counsel 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:



Jonathan Steffanoni
JD, BA, Dip.FS, FASFA
Managing Partner
0434 835 966
jsteffanoni@qmv-solutions.com



Gabriela Pirana
JD, BSc.
Senior Associate
0450 814 596
gpirana@qmv-solutions.com



David Reckenberg
LLB (Hons), B.Ec
Special Counsel
0411 265 284
dreckenberg@qmv-solutions.com



Jessica Pomeroy
MBA, BA
Senior Consultant
0400 708 447
jpomeroy@qmv-solutions.com



In the spirit of reconciliation QMV Legal acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples today.