

## LEGAL, REGULATORY & POLICY UPDATE PENSIONS AND SUPERANNUATION

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### IN BRIEF

*With very few sitting days in July, there was little movement of superannuation related bills in Parliament, however there was still a flurry of activity by Regulators and Treasury which should keep superannuation trustees busy.*

*APRA finalised the long-awaited Operational Risk Management Prudential Standard (CPS 230) and released draft guidance (SPG 230), and also finalised SPG 530 Investment Governance guidance. Jointly, ASIC and APRA released findings into a review of trustee implementation of the Retirement Income Covenant and separately released draft Regulator Rules for the Financial Accountability Regime. ASIC also commenced civil penalty proceedings against a superannuation trustee for alleged greenwashing activity.*

## COMMONWEALTH PARLIAMENT



### Superannuation Bills

July 2023  
Parliamentary Business

[LINK TO DETAILS](#)

#### Status key

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

Commonwealth Parliament did not sit in in July, with movement on several superannuation-related bills occurring in the final week of sittings. No superannuation related Bills were passed by both houses of Parliament during July.

The following Bill remains before the House of Representatives:

- [Treasury Laws Amendment \(2023 Law Improvement Package No. 1\) Bill 2023](#)
- [Treasury Laws Amendment \(2023 Measures No. 3\) Bill 2023](#)

The following Bills remain before the Senate:

- [Financial Accountability Regime Bill 2023](#)
- [Treasury Laws Amendment \(Consumer Data Right\) Bill 2022](#)
- [Treasury Laws Amendment \(2023 Measures No. 1\) Bill 2023](#)
- [Treasury Laws Amendment \(Modernising Business Communications and Other Measures\) Bill 2023](#)
- [Housing Australia Future Fund Bill 2023](#)

Parliament resumed for the week commencing 31 July 2023 through to 10 August and is not due to sit again until early September.

Several superannuation bills are scheduled to be discussed according to the draft program for the Senate, including the Financial Accountability Regime Bill, which is scheduled for debate on 2 August.



## MAJOR UPDATES



### CPS 230 Operational Risk Management Prudential Standard

17 July 2023  
*Prudential Standard*

[LINK TO DETAILS](#)

APRA released the finalised *Prudential Standard CPS 230 Operational Risk Management* (CPS 230) which aims to ensure APRA-regulated entities, including superannuation trustees, better manage operational risks and respond to business disruptions.

Several key changes were made since the draft CPS 230 was released for consultation in July 2022, some of which have already been foreshadowed:

- **Commencement delayed to 1 July 2025** (from 1 January 2025)
- Transitional arrangements for **pre-existing contractual arrangements with service providers**, with the standard commencing the earlier of the next contract renewal date or 1 July 2026;
- Flexibility to justify a service provider as non-material;
- Flexibility to justify certain business operations as non-critical;
- Removal of the register of material services providers from the Service Provider Policy; and
- Removal of the requirement to assess whether a service provider is systematically important in Australia before entering into or modifying a material arrangement.

Accompanying CPS 230, APRA also released draft *Prudential Practice Guide CPG 230 Operational Risk Management* (CPG230) for consultation, with feedback sought by 13 October 2023.

*Superannuation trustees should review the finalised standard to ensure preparatory action already undertaken aligns with the confirmed requirements. Significant changes are anticipated to policies and processes across multiple business units and existing service provider arrangements will need to be assessed against the transitional provisions available.*



### Financial Accountability Regime Regulator Rules

20 July 2023  
*Consultation*

[LINK TO DETAILS](#)

APRA and ASIC ('Regulators') jointly released draft *Financial Accountability Regime Act (Information for register) Regulator Rules 2023* ('Rules') for consultation in relation to the **Financial Accountability Regime** (FAR).

The Rules prescribe information for inclusion in the FAR **register of accountable persons** that must be reported to the Regulators by an accountable entity. The draft instrument also contains Authorised Deposit-Taking Institution (ADI) specific definitions of key functions that will apply.

**Consultation will be forthcoming** in relation to the specific key functions for superannuation trustees and insurers. However, the Regulators encourage superannuation trustees to review the Rules and the concept of a 'key function' for familiarity, noting the list of data items for inclusion in the Register set out in the Rules are relevant to all accountable entities.

Feedback is requested by 17 August 2023.

*Superannuation trustees should review the data items within the Rules to ensure this information is available and can be reported as required when FAR commences.*



## SPG 530 Investment Governance Guidance

20 July 2023  
Prudential Guidance

[LINK TO DETAILS](#)

APRA released a finalised *Prudential Practice Guide SPG 530 Investment Governance* (SPG 530) for superannuation trustees, along with a [response to submissions to the consultation](#) on the revised guidance. SPG 530 is intended to support trustees in meeting their obligations under the strengthened *Prudential Standard SPS 530 Investment Governance* (SPS 530) that commenced 1 January 2023, and provides:

- **additional guidance to support requirements in SPS 530** relating to liquidity management, stress testing and valuations;
- an outline of how APRA expects RSE licensees would consider material **environmental, social and governance (ESG) risk factors** as part of their overall investment risk management; and
- **greater clarity** in areas requested by industry in applying SPS 530.

The release of SPG 530 represents the final step in the uplift and strengthening of investment governance practices across the superannuation industry that has been underway since 2021.

The finalised SPG 530 has been published in the new integrated format introduced by APRA under the Modernising the Prudential Architecture initiative.

*Superannuation trustees should ensure investment teams are aware of the finalised guidance and that current investment practices align with APRA's expectations for compliance with the SPS 530.*



## Financial Reporting and Auditing Regulations

Legislative Instrument  
7 July 2023

[LINK TO DETAILS](#)

The Government made *Treasury Laws Amendment (Financial Reporting and Auditing of Registrable Superannuation Entities) Regulations 2023* to support the amendments in Schedule 6 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023* ('the Act') in relation to new financial reporting and auditing requirements for RSE licensees.

The Act extends and adapts the financial reporting and auditing requirements contained within the *Corporations Act 2001* to apply to RSEs, bringing RSEs in line with the obligations that apply to public companies and registered schemes. The Regulations include the following:

- the **information and certification requirements** for lodgement of the financial report, directors' report and auditor's report with ASIC;
- the information required to be **disclosed on the public website**; including details of key management personnel including remuneration, details of each outsourced service provider who supported a material business activity within the previous 12 months, and records of board attendance;
- remove requirement to provide abridged financial information, requiring instead **full financial statements to be published**; and
- changes to the **Annual Members Meeting notice**.

The Act and Regulations apply in relation to the report or audit of an RSE for the financial year beginning on, or after, 1 July 2023.

*Superannuation trustees should ensure finance teams are aware of the finalised Regulations and preparations are underway to adhere to the new reporting requirements, including updating website disclosure.*



## Retirement Income Covenant Review

18 July 2023  
*Review Findings*

[LINK TO DETAILS](#)

A joint thematic review by APRA and ASIC identified further work is required by superannuation trustees to implement the retirement income covenant. The report assessed 15 superannuation trustees representing half of total accounts and balances held by members aged 45 and over.

Key findings from the review show the need for greater focus on:

- **Understanding member needs:** critical information needed by trustees to understand member's needs is not accessed or utilised, with few planning to address these gaps;
- **Designing fit-for-purpose assistance:** whilst assistance for members has improved, trustees are not tracking how the assistance measures are used or their effectiveness; and
- **Overseeing strategy implementation:** many trustees have not embedded retirement income initiatives into their business plan, with insufficient quantitative metrics to assess the results.

The report includes examples of better practices and highlight priority actions for superannuation trustees. Where appropriate, APRA's prudential framework will be enhanced to reflect key findings of this review. APRA will consult on proposed enhancements later in 2023.

*Superannuation trustees should review and consider the findings against their own implementation of the RIC and business planning, ensuring any planned enhancements are implemented without delay.*



## Compensation Scheme of Last Resort Regulations

7 July 2023  
*Legislative Instrument*

[LINK TO DETAILS](#)

The Government released Regulations to support the **Compensation Scheme of Last Resort** (CSLR) legislation which recently passed Parliament. The [Financial Services Compensation Scheme of Last Resort Levy Regulations 2023](#) details:

- the **sub-sectors that are required to pay the annual levy** and general conditions for the imposition of the annual and special levy; and
- the **methods for calculating** the different types of levies.

The [Corporations Amendment \(Financial Services Compensation Scheme of Last Resort\) Regulations 2023](#) details the information:

- the CSLR operator must include in a notice to the Minister in relation to a revised claims, fees and costs estimate where the sub-sector levy cap for a period would be exceeded; and
- that must be included in the CSLR operator's report which is to be made publicly available at the end of each levy period.

The Government intends the CSLR to be in operation from April 2024 and expects to commence receiving consumer claims at this time.

*Superannuation trustees should ensure finance teams are aware of the Regulations and have visibility of the levy calculation methodology.*



## Financial Regulator Assessment Authority Report

13 July 2023  
Report

[LINK TO DETAILS](#)

The Financial Regulator Assessment Authority (FRAA) released a report *Effectiveness and Capability Reviews of the Australian Prudential Regulation Authority* which focused on the effectiveness and capability of APRA's supervision and resolution work in the superannuation industry.

The report found APRA's supervision function within superannuation is effective and capable, while its resolution function is significantly less developed, with opportunities identified to enhance APRA's performance in both functions. The FRAA identified 5 key areas of focus:

- **Increase efforts to identify risks in superannuation** including emerging and systemic risks, and their potential consequences to better perform supervisory and recovery and resolution planning;
- Prioritise and invest in **initiatives to recruit, train, retain and develop its staff** to drive deeper understanding and build stronger capability to manage and respond to emerging and systemic risks;
- Continue to invest in its **data and technology capabilities** and processes to provide timely insights, allow effective internal collaboration, and to the extent appropriate, minimise regulatory burden associated with data and information requests;
- Provide trustees with **annual plans of proposed supervisory activity and keep trustees informed** of its activities, including publishing methodologies and more detailed insights into thematic reviews; and
- prioritise **developing its resolution capability** and work closely with industry to lift awareness of recovery and resolution planning.

APRA confirmed they will act on these recommendations, to be reflected in APRA's Corporate Plan, which will be released next month.

*Superannuation trustees should note the FRAA's recommendations for APRA.*



## APRA Data Collections Roadmap

31 July 2023  
Announcement

[LINK TO DETAILS](#)

APRA published a letter to RSE licensees outlining plans to commence the first annual review of its data directions roadmap. The roadmap was initially released in March 2022 and sets out the 5-year plan for transforming APRA's approach to collecting financial industry data.

This review will reconsider the pace, sequencing, and priorities of the roadmap. APRA intends to provide further information on the outcome of the review in early 2024. Relevant to RSE licensees, APRA intends to:

- postpone consultation on RSE licensee operations and other reporting standards relating to financial data which was planned for November;
- engage with industry in mid-2024 on the design of a non-financial risk data collection to support supervision of APRA's policy priorities including and *CPS 230 Operational Risk Management, CPS 234 Information Security, CPS 510 Governance, CPS 520 Fit and proper*;
- commence formal consultation in November on proposed reporting standards for investments (including indirect investment costs), RSE and RSE licensee profile, and RSE licensee financials; and
- shortly release a response paper on disclosure and relevant updates to *CPS 511 Remuneration*.

*Superannuation trustees should review APRA's revised priorities and ensure relevant project teams are aware of any confirmed and potential changes to data collections.*



## APRA Cyber Security Stocktake

5 July 2023  
Assessment

[LINK TO DETAILS](#)

APRA released the initial findings in relation to an expansive study on cyber resilience in financial services which focussed on compliance with *Prudential Standard CPS 234 Information Security (CPS 234)* across the banking, insurance and superannuation industries. The results form part of a broader review currently underway, however represent the first tranche of entities reviewed which comprise approximately 24% of entities.

Several common deficiencies were identified by APRA, including:

- **incomplete identification and classification for critical and sensitive information assets**, where policies and methodologies are not fully established, with insufficient review of asset register information;
- **limited assessment of third-party information security capability** as control assessment plans were limited or did not exist;
- **inadequate definition and execution of control testing programs** with some entities not having a testing plan in place;
- **incident response plans not regularly reviewed or tested** and have limited plausible disruption scenarios;
- **limited internal audit review** of information security controls including those of a third-party entity; and
- **inconsistent reporting** of material incidents and control weaknesses to APRA in a timely manner.

Entities are currently participating in the second and third tranches of APRA's assessment, with the fourth and final tranche later this year.

*Superannuation trustees should review their compliance with CPS 234 against APRA's findings, with a particular focus on the adequacy of third-party service providers' testing plans and policies.*



## GUIDANCE AND POLICY



### ACCC Greenwashing Guidance

14 July 2023  
*Draft Guidance*

[LINK TO DETAILS](#)

The Australian Competition and Consumer Commission (ACCC) released draft guidance to improve the integrity of environmental and sustainability claims made by businesses and **protect consumers from greenwashing**. This follows an internet sweep conducted by the ACCC in October 2022 which found 57 per cent of businesses reviewed were making potentially misleading environmental claims.

*Environmental and sustainability claims – Draft guidance for business sets out **eight principles the ACCC encourages business to apply** when making sustainability claims to minimise the risk of misleading consumers:*

- Make accurate and truthful claims that do not exaggerate benefits;
- Have evidence to back up any environmental claims made;
- Provide a full picture to consumers, not omitting relevant information;
- Explain any conditions or qualifications to claims made;
- Avoid broad and unqualified claims;
- Use clear and easy-to-understand language;
- Visual elements (e.g. the colour green) may be misleading; and
- Be direct and open about sustainability transition.

*Superannuation trustees should note the ACCC draft guidance as it provides insight into the expectations of the ACCC to comply with Australian Consumer Law, which may inform approaches by ASIC in enforcing comparable aspects of financial services law.*



### Measuring What Matters Wellbeing Framework

21 July 2023  
*Framework*

[LINK TO DETAILS](#)

The Australian Government released the *Measuring What Matters Australian's First Wellbeing Framework* which is the Government's first attempt to outline a framework that can be used to track and inform Australia's wellbeing beyond traditional economic measures.

The release of the Framework follows the October 2022-23 Federal Budget announcement and two consultation phases. The Framework sets out the factors identified as important to Australian's individual and collective wellbeing across all phases of life within 5 broad themes: healthy, secure, sustainable, cohesive and prosperous. The principles of inclusion, equity and fairness underpin each theme.

Whilst broadly applicable, the Framework does reference superannuation in the context of improving the housing availability through expansion of eligibility of the downsizer scheme and undertaking meaningful tax reform to improve the equity and sustainability of the superannuation system.

*Superannuation trustees should note the proposed change to downsizer eligibility and ensure internal teams remain abreast of any developments.*



## TECHNICAL AMENDMENTS



### Financial Advisor Qualifications Determination

6 July 2023  
*Legislative Instrument*

[LINK TO DETAILS](#)

The [Corporations \(Relevant Providers Degrees, Qualifications and Courses Standard\) Amendment \(2023 Measures No. 2\) Determination 2023](#) ('the Determination') was made. The Determination amends [Corporations \(Relevant Providers Degrees, Qualifications and Courses Standard\) Determination 2021](#) which sets out the approved qualifications a relevant provider must have to provide personal advice to a retail client. The Determination:

- Adds two new double degrees approved by the Minister; and
- Updates the required unit names and codes in the conditions applied to approved degrees.

In accordance with s 921B(6)(a) of the *Corporations Act 2001*, the Minister may approve bachelor or higher degrees or equivalent qualifications for relevant providers. The list of qualifications is updated as educational providers make changes to existing degrees and associated units.

*Superannuation trustees should note the Determination.*



### AASB Superannuation Consultation

11 July 2023  
*Consultation*

[LINK TO DETAILS](#)

The Australian Accounting Standards Board (AASB) is performing a review of two standards relating to superannuation entities. The *ITC 54 Post-implementation Review of AASB 1056 Superannuation Entities and Interpretation 1019 The Superannuation Contributions Surcharge* is seeking feedback on whether there are requirements or guidance that might need to be added, removed or amended based on application experience.

*AASB 1056 Superannuation Entities* was issued to address matters of relevance to superannuation entities, including focusing on member benefits and limiting the accounting policy choices available in applying other Accounting Standards, and has applied to RSEs since 2016. *Interpretation 1019* was issued to address the accounting for the surcharge that applied to higher income earners between 1996 and 2005.

Feedback is sought on specific topics as set out in the consultation paper and is sought by 10 November 2023.

*Superannuation trustees should consider the proposed changes and whether a submission is warranted.*



### Superannuation Data Transformation

19 July 2023  
*FAQs*

[LINK TO DETAILS](#)

APRA released two new Frequently Asked Questions (FAQs) in relation to the long-running Superannuation Data Transformation project:

- **332.0 u how service providers or payees who are standard employer sponsors should be treated in SRS 332.0 Table 1 'Payees and service providers' when reporting the 'Service provider relationship type'**, clarifying that where a standard employer sponsor relationship exists and does not result in a relevant interest or duty in accordance with SPS 521 Conflicts of Interest, no relationship needs to be reported; and
- **605.0 w how a 'connected entity' is defined for reporting 'Investment option management type' and 'Investment option strategy setting type' in SRS 605.0 Table 3**, clarifying a connected entity is defined as per s 10(1) of the SIS Act.

*Superannuation trustees should ensure the appropriate project resources are aware of the new information.*





## ENFORCEMENT ACTIVITY



### ASIC v Vanguard Investments

25 July 2023  
*Civil Penalty Proceedings*

[LINK TO DETAILS](#)

ASIC lodged civil penalty proceedings in the Federal Court against Vanguard Investments Australia (Vanguard) in relation to claims made about certain environmental, social and governance exclusionary screens applied to investments in a Vanguard fund.

Specifically, ASIC alleges Vanguard made false and misleading statements and engaged in conduct liable to mislead the public in representing that all securities in the Vanguard Ethically Conscious Global Aggregate Bond Index Fund (Hedged) (Fund) were screened against certain ESG criteria.

Investments held by the Fund were based on an index called the Bloomberg Barclays MSCI Global Aggregate SRI Exclusions Float Adjusted Index (Index). Vanguard claimed the Index excluded issuers with significant business activities in a range of industries, including those involving fossil fuels. However, ASIC alleges these bonds exposed investor funds to investments which had ties to fossil fuels, including those with activities linked to oil and gas exploration.

The disclosure for the alleged contraventions includes Product Disclosure Statements dated between 7 August 2018 and 17 February 2021, statements made to the media and published on the fund website.

ASIC is seeking declarations, financial penalties and an order for Vanguard to publish any contraventions found by the Court.

The proceedings might provide valuable insight into the Courts' approach to distinguishing between ESG risk analysis and ethical screens in making investment decisions.



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## CONTACT US

If you have any questions or need assistance, you can contact us directly via the details below:



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