

## IN THE PAST MONTH:

- OPERATIONAL RISK FINANCIAL REQUIREMENT
- ASIC CHOICE PRODUCT REPORT
- CSLR COMMENCEMENT CONFIRMED
- REST CLASS ACTION
- CONTRIBUTION CAP INCREASES



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## IN BRIEF

The **Senate Economics Committee** is busy with several superannuation related bills currently being scrutinised. We expect committee reports on the **Better Targeted Superannuation Concessions** and **Objective Bills** in the coming months.

The Bill which seeks to exempt trustees of APRA regulated superannuation funds from **NALE** tax and adjust **AFCA's jurisdiction** remains in the Senate and wasn't prioritised for debate during February, we hope to see passage soon.

There was further consultation by **APRA** in relation to changes to the **ORFR** standard and guidance, and **ASIC** released findings concerning trustee oversight of investment performance of **Choice** products.

There were also some interesting **criminal law** developments which are relevant to trustees of superannuation funds.

## COMMONWEALTH PARLIAMENT



## Superannuation Bills

February 2024  
Parliamentary Business

[LINK TO DETAILS](#)

## Status key

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

Commonwealth Parliament returned from the summer recess on 6 February, with both houses sitting for only 3 days that week and the Senate sitting from 12 February to 15 February.

A final sitting week for both houses occurred from 26 to 29 February.

While there was debate on the *Superannuation (Objective) Bill*, there was no movement of superannuation-related legislation during this time. The status of relevant bills and committee reports are below:

- [Housing Australia Future Fund Bill 2023 \[No. 2\]](#) (won't proceed given passage of No. 1 Bill);
- [Treasury Laws Amendment \(Better Targeted Superannuation Concessions and Other Measures\) Bill 2023](#) (Senate Economics Committee report due 19 April 2024);
- [Superannuation \(Better Targeted Superannuation Concessions\) Imposition Bill 2023](#) (Senate Economics Committee report due 19 April 2024);
- [Superannuation \(Objective\) Bill 2023](#) (Senate Economics Committee report due 28 March 2024);
- [Treasury Laws Amendment \(Support for Small Business and Charities and Other Measures\) Bill 2023](#) (Senate Economics Committee recommended passage without amendment); and
- [Treasury Laws Amendment \(Consumer Data Right\) Bill 2022](#) (Senate Economics Committee report due 3 May 2024).

Both Houses are due to sit again on 18 March 2024.



## MAJOR UPDATES

Operational Risk  
Financial Requirement19 February 2024  
*Consultation*[LINK TO DETAILS](#)

APRA issued a letter to RSE licensees for consultation on further proposed amendments to *Prudential Standard SPS 114 Operational Risk Financial Requirement* (SPS 114). This follows a Discussion Paper released for consultation in November 2022 which contained a series of potential changes to SPS 114. APRA received a broad range of feedback to the Discussion Paper, which prompted **APRA to review its initial proposals and make further changes** as detailed in the recent letter.

Broadly, APRA is considering a simpler approach to the operational risk financial requirement (ORFR) obligations and intends to focus on integrating SPS 114 with *Prudential Standard CPS 230 Operational Risk Management* (CPS 230). Accordingly, the letter confirms:

- **APRA will not proceed with the Baseline+ model outlined in the initial Discussion Paper** and is not intending to extend the use of the ORFR to cover member transfer, recovery, exit and resolution plans;
- **An expanded set of uses for the ORFR to manage operational risk impacts**, with the *Draft Prudential Practice Guide SPG 114 Operational Risk Financial Requirement* (Draft SPG 114) detailing how the ORFR may and may not be used;
- **The ORFR target amount of 25 basis points of FUM will not change** from the current SPS 114, however Draft SPG 114 outlines APRA's expectations where an RSE licensee seeks to introduce a bespoke ORFR target amount better suited to their risk profile; and
- **The notification requirements in SPS 114 will be scaled back**, with notification to APRA only required where the RSE licensee seeks to materially amend its ORFR target amount.

APRA is also requesting feedback on the compliance impact and costs associated with implementing these changes, along with any assumptions and limitations in the cost figures provided. APRA intends to finalise SPS 114 and SPG 114 by late 2024 with commencement of the new requirements in 2025.

*Superannuation trustees should review APRA's position and ensure finance and legal consider the impact on trustee reserve policies and practices.*

Combatting Foreign  
Bribery29 February 2024  
*Bill passed*[LINK TO DETAILS](#)

Commonwealth Parliament has passed legislation to amend the *Criminal Code Act 1995* to **extend the foreign bribery offence** to include:

- the bribery of candidates for public office and bribery conducted to obtain a **personal advantage**;
- remove the requirement that a benefit or business advantage be 'not legitimately due' and replace it with the concept of '**improperly influencing**' a foreign public official;
- remove the requirement that the foreign public official be **influenced in the exercise of their official duties**; and
- and created an offence of **failure of a body corporate to prevent** foreign bribery by an associate.

The Act also amended the *Income Tax Assessment Act 1997* to preserve the existing rule which prohibits claiming a deduction for a bribe.

*Trustees should ensure that adequate training programs are in place to ensure employees are aware of the foreign bribery related laws.*



## ASIC Choice Product Performance Review

21 February 2024  
*Report*

[LINK TO DETAILS](#)

ASIC released a report detailing its findings in relation to **why members continued to invest in persistently underperforming Choice superannuation products**.

*Report REP 779 Superannuation choice products: What focus is there on performance?* reviewed the conduct of trustees, financial advisors and Australian Financial Services Licensees (licensees) to better understand the influence on member decision-making regarding Choice investments.

The report identified **an insufficient focus on performance and a lack of transparency about persistently underperforming investment options**. Further, the heavy reliance members place on trustees, financial advisors and licensees in this regard may be misplaced, with many of these industry participants requiring an uplift to their practices.

ASIC identified **little evidence of trustees communicating to members about investment option performance in a targeted manner**, and financial advisors were not always addressing underperformance where relevant. ASIC detailed a range of focus areas for trustees, financial advisors and licensees to ensure they are **prioritising investment option performance when considering member outcomes**.

ASIC will continue to work closely with APRA to drive better investment governance practices in the superannuation industry, and where appropriate, use regulatory powers where trustees are not meeting their obligations.

*Superannuation trustees should note ASIC's findings to ensure appropriate practices are in place to effectively monitor Choice product performance in consideration of member outcomes.*



## Contribution Cap Increase 2024

22 February 2024  
*Announcement*

[LINK TO DETAILS](#)

The **contribution cap limits** are set to increase from 1 July 2024 following the [release of the Average Weekly Ordinary Time Earnings](#) (AWOTE) for the November 2023 reference period by the Australian Bureau of Statistics (ABS). The concessional contribution cap is indexed to AWOTE in increments of \$2,500, with the non-concessional cap set as four times the concessional cap.

From 1 July 2024, the new contribution caps will be:

- **concessional contribution cap: \$30,000 per year** (up from \$27,500)
- **non-concessional contribution cap: \$120,000 per year** (up from \$110,000)
- **bring-forward limit: \$360,000 over a three-year period** (up from \$330,000) where the bring-forward provision is triggered from 1 July 2024 (otherwise the current limit still applies).

*Superannuation trustees should note the forthcoming increase and ensure systems and processes are updated to reflect the change. Fund collateral that references to contribution caps will also need to be amended and training provided to staff.*



## POLICY AND REGULATION



### Compensation Scheme of Last Resort

26 February 2024  
Media Release

[LINK TO DETAILS](#)

Treasury has confirmed **commencement of the Compensation Scheme of Last Resort** (CSLR) will be 2 April 2024, allowing claims to be lodged from this date. The Government also announced the Chair of the Board of CSLR Limited for an initial term of three years.

The Government affirmed the intention of the CSLR is to provide **compensation for misconduct by a financial firm** who was licensed to provide the relevant product or service. [Recent amendments were made to AFCA's jurisdiction](#) in preparation for commencement of the regime, whereby AFCA can only hear complaints where the financial services firm was licensed to provide the relevant product or service.

The Government has also foreshadowed further changes the AFCA Rules to cater for these jurisdiction changes.

*Superannuation trustees should note the confirmed commencement date, although the direct impact on trustees is expected to be limited outside of payment of CSLR levies.*



### Life Insurance Regulations

19 February 2024  
Legislative Instrument

[LINK TO DETAILS](#)

The *Life Insurance Regulations 2024* (2024 Regulations) were registered which remake and seek to improve upon the *Life Insurance Regulations 1995* which were due to sunset on 1 October 2024.

The 2024 Regulations:

- Prescribes a **minimum term of 10 years** for an annuity paid under a contract to constitute a life policy under section 9 of the *Life Insurance Act 1995*; and
- Prescribes the **maximum interest rate that may be applied to overdue premiums**, with a formula linked to the 10-year Commonwealth Government bond yield as published by the RBA prescribed and expressed as a percentage.

The 2024 Regulations commence 1 March 2024.

[Treasury Laws Amendment \(Insurance\) Regulations 2024](#) were also registered and make consequential amendments to a suite of legislation, including the *Corporations Act 2001* to reflect the 2024 Regulations.

*Superannuation trustees should note the new Regulations.*



### Security of Critical Infrastructure Act

19 February 2024  
Consultation

[LINK TO DETAILS](#)

The Department of Home Affairs is consulting on amendments to rules made under the *Security of Critical Infrastructure Act 2018* (SOCI Act). The *SOCI Act* has designated **critical superannuation assets** under the act.

According to the explanatory material, the consultation package includes amendments intended to clarify the **positive security obligations** that apply to **payment systems** which are 'critical financial market infrastructure assets' under the *SOCI Act*.

This consultation on amending rules is separate to the consultation paper on proposals for new legislative initiatives to address gaps in current cyber security laws and amendments to the *SOCI Act* to improve security and resilience following attacks.

*Trustees of superannuation funds should consider the impact of the changes to rules on their risk management and reporting and notification obligations under the SOCI Act.*



## TECHNICAL UPDATES



### UN & Autonomous Sanctions

26 February 2024  
*Legislative Instrument*

[LINK TO DETAILS](#)

The *Department of Foreign Affairs and Trade (DFAT) Sanctions Office* has made amendments to the **Consolidated List** following legislative instruments made by the Assistant Minister for Foreign Affairs.

The changes are part of Australia's **Autonomous Sanctions Regime** and include both **thematic** and **designated persons and entities**.

- [Autonomous Sanctions \(Designated Persons and Entities and Declared Persons – Russia and Ukraine\) Amendment \(No. 1\) Instrument 2024](#)
- [Autonomous Sanctions \(Designated Persons and Entities and Declared Persons—Thematic Sanctions\) Amendment \(No. 2\) Instrument 2024](#)

There were also changes to Australia's **United Nations Sanctions regime** on advice from the *United Nations Security Council Committee* established pursuant to Resolution 1970 (2011) concerning Libya.

*Trustees of superannuation funds should ensure that appropriate screening and monitoring mechanisms are in place in relation to investment exposure and benefit payments.*



### Privacy Regulations Sunsetting Deferred

20 February 2024  
*Legislative Instrument*

[LINK TO DETAILS](#)

The Attorney General made [Legislation \(Deferral of Sunsetting—Privacy Regulation\) Certificate 2024](#) ('Certificate') which **defers the sunsetting date** the [Privacy Regulation 2013](#) from 1 April 2024 to 1 April 2026.

The Explanatory Statement accompanying the Certificate notes the **deferral allows the Government additional time** to review and respond to the [Privacy Act Review Report](#) ('Report') released in February 2023. The Regulations are expected to be remade within the next 24 months and incorporate the substantial reforms.

The Regulations currently provide for certain **exemptions to the Australian Privacy Principles** in relation to superannuation and Government agencies.

*Superannuation trustees should note the continuation of existing Regulations and remain abreast of the Government's response to the Privacy Act Review Report when released given significant changes are expected.*



### Eligible Rollover Fund Prudential Standard

16 February 2024  
*Legislative Instrument*

[LINK TO DETAILS](#)

The Australian Prudential Regulation Authority (APRA) announced it had made *Superannuation (prudential standard) determination No. 1 of 2024*, to revoke *Prudential Standard SPS 450 Eligible Rollover Fund Transition*.

SPS 450 set out the required minimum processes for RSE licensees of an **eligible rollover fund (ERF)** to transfer members' money to another fund in the event that their **authorisation to operate as an ERF is cancelled**.

In March 2021, Parliament passed the *Treasury Laws Amendment (Reuniting More Superannuation) Act 2021*, which required a trustee of an ERF to **pay the balance of all accounts held for members to the Australian Tax Office (ATO)** by 31 January 2022. As all monies held in ERFs were transferred to the ATO by 31 January 2022, SPS 450 is now redundant.

*There is no effect from the revocation on trustees of superannuation funds.*



## ENFORCEMENT ACTION & CASE LAW



### Kusmanoff v REST

16 February 2024  
Class action

[LINK TO DETAILS](#)

A class action suit has been brought against the trustee of the *Retail Employees Superannuation Trust* (REST) in relation to the provision **Income Protection** (IP) and claims that **premiums were wrongfully deducted**.

The class action alleges that between December 2008 and June 2019, REST automatically issued IP to new members who joined the fund without seeking consent before doing so. Further, the class action alleges that although premiums were paid, the IP policy **failed to provide a benefit** to members if no contribution was made for 13 months or more, and where multiple IP policies were held, the policy provided little to no coverage.

The First Case Management Hearing was heard by the Federal Court on 16 February 2024, with orders made for REST to file and serve a defence by 28 March 2024. A Case Management Hearing is scheduled for 10 May.

The suit alleges up to 500,000 members may be affected. Rest has indicated it will defend the class action.



### ASIC v Melbourne Securities

28 February 2024  
Infringement Notice

[LINK TO DETAILS](#)

The *Australian Securities & Investments Commission* (ASIC) announced that it had issued a **greenwashing** related infringement notice to *Melbourne Securities Corporation Limited* (Melbourne Securities).

*Melbourne Securities* has paid \$13,320 to comply with the infringement notice, which alleged it made misleading statements regarding its **Bloom Climate Impact Fund** (Bloom Fund).

ASIC alleged that from March 2022 to June 2023, Melbourne Securities made statements in the Fund's **Product Disclosure Statement** (PDS) that said the Fund would **seek to avoid** the investment of the Fund's assets in a range of excluded activities, including in fossil fuels.

Despite this, the Bloom Fund used **revenue thresholds** which allowed it to invest in companies that derived **up to 33% revenue from excluded activities**, such as fossil fuels. ASIC contended these revenue thresholds were **not disclosed** to investors and were **contrary to PDS** statements.

ASIC stated its belief that believes that applying a negative screening process which allows a company to derive up to 33% of its revenue from an excluded activity is not seeking to avoid investments in those activities.



### Fraud Related Criminal Prosecutions

6 February 2024  
Criminal charges

[LINK TO DETAILS](#)

ASIC announced that two Melbourne men allegedly involved in a sophisticated **self-managed super fund (SMSF) scam** targeting Australian investors, have appeared before the Melbourne Magistrates Court and been charged with various offences following an ASIC investigation.

The charges follow an ASIC investigation into suspected **fraudulent investment websites** that operated between November 2020 and July 2021 under various names. The website operators used the Australian financial service licence of two legitimate companies without their knowledge or consent.

The accused were **granted bail** to reappear for committal mention before the Court on 30 April 2024. The charges appear to be related to a recent Federal Court case concerning an AFCA determination on liability of a superannuation trustee for fraud related loss.



## ABOUT QMV LEGAL

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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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