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FSC Policy Update - Issue 81 - 4 September 2024

Welcome to Issue 81 of the FSC Policy Update. This article outlines legislative and regulatory developments in the superannuation, investments, financial advice, tax, technology and innovation sectors, plus more. Learn about what's impacting the financial services industry below.

.Click on the topic of interest below to read more.

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PARLIAMENT, LEGISLATION AND REGULATION

Climate-related financial disclosure reforms

The Government's climate-related financial disclosure reforms have been passed by the Senate, with Government amendments in response to concerns raised by the Greens and Senator David Pocock.

The Bill will give the Australian Accounting Standards Board (AASB) authority to set legally-binding sustainability reporting standards. The Government amendments included a scenario analysis disclosure requirement which will require reporting entities to report against a high global warming scenario (defined as an increase in global average temperature that well exceeds 2 degrees above preindustrial levels) and a low global warming scenario (defined as an increase of 1.5 degrees above preindustrial levels).

The Bill will next return to the House of Representatives in September where it is expected to pass without issue.

The FSC will be engaging with the AASB as it finalises the reporting standards as well as with ASIC as it looks to draft guidance on the reporting regime.

Please contact Jack Morgan if you would like any further information

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Tax on superannuation balances over $3 million

The bill applying a higher tax rate on superannuation balances over $3 million remains in the House of Representatives, with cross bench MPs and Senators expressing a range of concerns.

Negotiations are focused on:

- Whether the $3 million threshold should be indexed;
- Whether the tax should apply to unrealised capital gains; and
- How the tax would apply to various defined benefit schemes and specific sectors, such as farmers and small business owners.

Passing the Bill remains a Government priority and the FSC is participating in discussions around the range of amendments that are being debated.

Please contact Aidan Johnson if you would like any further information.

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Public Country-by-Country Reporting

The *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024* includes provisions to implement a regime for public Country-by-Country Reporting (CbCR).

An inquiry conducted by the Senate Economics Legislation Committee released its report on 2 August 2024. The Committee recommended passage of the Bill, with additional comment from Coalition Senators proposing amendments relating to protection of commercially sensitive information and consistency with other global reporting frameworks.

The Senate will now consider the Bill and proposed amendments.

Please contact James Young if you would like any further information.

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Global and Domestic Minimum Tax

The Government has introduced the *Taxation (Multinational—Global and Domestic Minimum Tax) Imposition Bill 2024* and related Bills to implement aspects of the OECD/G20 Two Pillar Solution as part of a global solution to ensure a 15 per cent minimum effective rate of corporate taxation. These Bills introduce the primary legislation, which are to be followed by subordinate instruments.

Following public consultation, the Senate Economics Legislation Committee recommended passage of the Bill in its report released on 14 August 2024.

It is expected that further subordinate legislation will be introduced to Parliament following passage of the primary Bill.

Please contact James Young if you would like any further information.

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ASIC's 2024-25 Corporate Plan

ASIC has released its Corporate Plan for 2024-25. Further details relevant to superannuation, funds management and financial advice are outlined under the specific sector updates. The regulator's strategic priorities include:

1. Improving consumer outcomes;
2. Addressing financial system climate change risk;
3. Better retirement outcomes and member services;
4. Advancing digital and data resilience and safety; and
5. Driving consistency and transparency across markets and products.

ASIC also outlined its longer term priorities for 2024 - 28 which include: continuing to work closely with APRA to implement the Financial Accountability Regime (FAR); ensuring the objectives of the reportable situations regime are met; continuing to support the implementation of the Compensation Scheme of Last Resort (CSLR);

contributing to the development of the beneficial ownership regime; and working with government to support the introduction of the Regulatory Initiatives Grid (RIG).

Please contact Harvey Russell if you would like any further information.

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SUPERANNUATION

APRA releases the 2024 Performance Test results

The annual performance test (APT) results were released on 30 August 2024. There were no MySuper products or non-platform trustee directed products (simple choice) that failed this year's performance test. There were 37 platform products (complex choice) that failed the performance test, including 27 products that were a repeat fail and will be closed to new members. This year, following the release of the pass/fail results, APRA is also expected to release a more comprehensive suite of transparency data including the detailed performance test results and the heatmap data. This will be the first year this data has been released together as a newly branded 'transparency report'. This report is expected to be released approximately two months after the APT results were released, likely to be in October.

Please contact Aidan Johnson if you would like any further information.

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Regulators highlight more work to be done in Retirement Income Covenant Implementation

APRA Deputy Chair Margaret Cole and ASIC Commissioner Simone Constant spoke at the recent Connexus Retirement Summit. While both acknowledged the work industry has done so far on the Retirement Income Covenant implementation, both said there was much more to do.

The lack of progress in relation to success metrics was highlighted as an area of concern for APRA. Ms Cole noted that APRA was not convinced that uncertainty around the financial advice framework and insufficient member data should be halting progress.

Ms Constant focussed on the customer experience, highlighting that APRA and ASIC felt there was a lack of urgency since the thematic review.

Ms Constant also highlighted the continued growth in complaints about claims handling, reminding funds of ASIC's report on death benefits handling which suggested funds could do more to help their customers understand this process.

Please contact [Kirsten Samuels] if you would like any further information.

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Key Superannuation Themes from ASIC's 2024-25 Corporate Plan

APRA has now released their 2024-25 Corporate Plan which details a number of areas that APRA will be focusing on in terms of their strategic, policy, supervision and data priorities. The overarching themes of the plan includes a focus on financial and operational resilience, industry's response to significant and emerging risks and the industry-specific risks, namely being the retirement income covenant for the superannuation industry.

Strategic priorities

- APRA will conduct a system-wide stress test for large superannuation funds and will focus on stress testing the recovery and exit planning of the system.
- APRA will also aim to increase operational risk expectations, revise operational risk financial requirements, and prepare for new standards like CPS 230, which comes into force on 1 July 2025.
- Given the heightened cyber risks, APRA will be focusing on ensuring superannuation funds meet CPS 234 standards for information security, including a survey APRA is planning to conduct on IT and cyber capabilities.
- APRA will also review governance standards and consult on necessary prudential framework changes, this will namely include SPS 510 Governance and SPS 520 Fit and Propper.

Policy Priorities

- APRA will be embedding climate risk considerations into CPS 220 and release insights from climate risk self-assessment surveys.
- APRA will be focusing on ensuring trustees adhere to enhanced member outcome standards, addressing underperformance, and improving fund-level expense transparency.

Supervision Priorities

- APRA will review investment governance practices, focusing on unlisted assets and liquidity stress preparedness.
- APRA will also be focusing on the implementation of the FAR for the superannuation industry where it will aim to increase governance and accountability by March 2025.

Data Priorities

- APRA will aim to publish fund-level expense data and complete phase 2 of the Superannuation Data Transformation program.
- Remaining D2A data collections will be migrated to APRA Connect to retire legacy systems.

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INVESTMENTS

Key Funds Management Themes from ASIC's 2024-25 Corporate Plan

ASIC's 2024-25 Corporate Plan contains a plan to advance strategic priorities over 2024-28, including notably to:

- Improve consumer outcomes: This involves targeting misconduct in a range of areas, for example through targeting poor product design and distribution practices by ensuring compliance with DDO obligations.
- Address financial system climate change risk: This will be advanced by measures such as supporting the introduction of the mandatory climate-related financial disclosure requirements, supporting fair and efficient carbon markets and products, and deterring greenwashing and other forms of misconduct.
- Drive consistency and transparency across markets and products: This objective is built on key activities including reviewing recent growth in private markets (reportedly with an emphasis on private credit), implementing competition in clearing and settlement service rules and maintaining its focus on regulating existing and emerging financial products and services.

Please contact Jack Morgan if you would like any further information.

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CHESS replacement and T+1 settlement

The ASX has released a consultation paper on the Scope and Implementation of CHESS replacement Release 2 outlining ASX's proposed:

- design, scope and schedule for Release 2;
- high-level plan for the timing and approach for a transition to a T+1 settlement cycle;
- approach to interoperability for CHESS replacement; and
- testing and industry readiness approach for Release 2.

Responses to the consultation paper are due to the ASX by 13 September 2024.

Please contact Jack Morgan if you would like any further information.

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AASB consultation on an exposure draft of illustrative examples on climate-related and other uncertainties in financial disclosure

The Australian Accounting Standards Board (AASB) has released an exposure draft of illustrative examples focused on climate-related financial disclosure in financial statements.

On 16 September at 2-4pm (AEST) the AASB will be hosting a public virtual roundtable discussion in relation to the eight illustrative examples. Further information about this roundtable is located here and members can register to attend here. Comments are due to the AASB by 4 October 2024.

Please contact Jack Morgan if you would like any further information.

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Periodic statements for ETFs

In response to FSC advocacy, ASIC has now implemented reforms to, among other things, move periodic statements for ETFs to default onto electronic rather than paper-based means of communication. This means that:

- Issuers need only send one notification (by post or email) to investors that in the future, investors will NOT receive a notification that their periodic statements are ready. Rather, a notification will be made each year/as needed on a website that the periodic statement is available for download.
- Performance data no longer needs to be contained in periodic statements. However, periodic statements should contain a reference directing the investor to the relevant website (eg the issuer’s website) where fund-level performance information is available.

Please contact Jack Morgan if you would like any further information.

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National Innovation Visa

In the 2024-25 Budget, the Government announced the implementation of a new National Innovation visa to replace the existing Global Talent and Business Innovation and Investment Program streams. The new visa aims to target exceptionally talented migrants who will drive growth in sectors of national importance.

Following the recent promotion of Tony Burke to Minister for Home Affairs and Matt Thistlethwaite to Assistant Minister for Immigration, the FSC wrote to Mr Burke and Mr Thistlethwaite advocating the maintenance of an investor visa within Australia's migration framework. The FSC will liaise with Mr Burke and Mr Thistlethwaite and their teams to discuss this issue.

Please contact Jack Morgan if you would like any further information.

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ADVICE

Assessing Financial Adviser qualifications

ASIC has recently published three worked examples on assessing financial adviser qualifications. The examples provide guidance for advice licensees when determining whether a person has met the education and training standard (Qualifications Standard) under the *Corporations Act*. The examples cover scenarios where the person has an approved degree, where the person has an approved degree requiring a bridging unit, and where an existing provider does not have an approved degree.

The examples contain information on how to make the relevant assessments, together with how to provide this information to ASIC via ASIC Connect.

Please contact Harvey Russell if you would like any further information.

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Quality of Advice Review Implementation

The Government is expected to consult over the coming weeks on the shape of its 'Tranche 2' financial advice reform package.

The Tranche 2 package will contain the 'direction of travel' on key aspects of reforms, including:

1. The parameters for the new category of adviser, and who can employ these advisers;
2. Amendments to the Best Interest Duty, including how advice can be scoped;
3. The use of nudges by superannuation trustees and whether consequential changes to the legal framework are required; and
4. Abolition of Statements of Advice and changes to record keeping requirements.

The FSC has been working closely with Treasury on key design issues over the last couple of months and will take a leading role in responding to the consultation package once it is released.

Please contact Harvey Russell if you would like any further information.

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Key Financial Advice Themes from ASIC's 2024-25 Corporate Plan

As part of ASIC's Corporate Plan for 2024-25 the regulator has included a strategic priority to drive better consumer outcomes for consumers of financial products and services. This includes support for Treasury as they progress the *Delivering Better Financial Outcomes* (DBFO) law reform package including input into the reforms and helping to implement change through guidance, legislative instruments and other relevant ASIC documents.

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TECHNOLOGY AND INNOVATION

Consumer Data Rights (CDR) back on the agenda but moving slowly

At a CEDA event last week, Assistant Treasurer and Financial Services Minister Stephen Jones announced the Government intended to continue its program of work on the Consumer Data Right (CDR). However, hearing industry concerns about the slow up take of the CDR, the Minister noted the Government intended to move slowly to ensure the settings were right and consumers were using the service before progressing to other areas.

The Minister also flagged the Government wanted to address concerns around the governance of the CDR standards and rules, announcing a consultation into these processes.

The FSC understands that superannuation is still an area the Government would like to explore CDR use cases for, however, this is not an immediate priority.

Please contact Kirsten Samuels if you would like any further information.

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LEGAL, TAX AND CROSS-PORTFOLIO

Anti-Money Laundering and Counter-Terrorism Financing Laws (AML/CTF)

AUSTRAC consultation on proposed AML/CTF Rule amendments

AUSTRAC has released proposed amendments to Chapters 4 and 15 of the AML/CTF Rules for public consultation.

AUSTRAC is proposing these amendments to provide for a definition of 'nominee of a custodian' which will apply the same relief from collecting and verifying trust-related information afforded to customers who are custodians, to customers who are nominees of custodians.

The proposed amendment is limited to a related body corporate of a 'custodian' who meets the existing definition under paragraph 4.4.19 of the AML/CTF Rules. It also includes a requirement for the nominee to provide the relevant reporting entity with certification that their appointing custodian has given them an appropriate certification that they:

- satisfy the geographical link or are on the Reporting Entity Roll; and
- have carried out all applicable customer identification procedures in relation to their underlying customers.

The FSC is reviewing the proposed amendments with members with a view to providing any relevant feedback to AUSTRAC.

Know your customer (issues and other AML/CTF obligations arising from the closure of the mFunds service

With the closure of the mFunds service, industry is considering what obligations under the AML/CTF Act might apply in respect of those investors who acquired units via the mFunds service, particularly in circumstances where the scheme operators (i.e. issuers of units in the fund) have not received typical customer information on the basis that investors have not been required to complete an application form when using the service.

The FSC met with AUSTRAC in July to discuss these concerns and is working with members to prepare a written submission for AUSTRAC to consider in more detail, which is expected to include a form of application for a general exemption from certain obligations under the AML/CTF Act and accompanying rules.

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Financial Accountability Regime (FAR)

Following the release of final regulator rules and new information for Superannuation and Insurance AFSLs on 11 July (these were previously expected by end June 2024), the FSC met with APRA and ASIC to provide initial feedback on these rules. The regulators confirmed that they do not expect to release any further formal guidance on the FAR regime at this point, however they do plan to host further industry webinars and release informational videos in the coming months.

The FSC continues to convene the FAR Working Group to discuss implementation practicalities including how different businesses determine who are accountable persons and significant related entities.

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Breach Reporting (Reportable Situations)

Research project

The FSC is moving forward with a Research project to advance the evidence base for our advocacy on reforms to simplifying breach reporting regulations.

The project will be carried out by an economic consultant, Positive Economics Advisory, and seeks to estimate the compliance costs of the current regime and the potential compliance cost savings of the FSC's proposed recommendations to streamline the regime.

For further information, please contact David Williams-Chen directly at *david@positiveeconomics.com.au*.