

Blake Briggs

24 October 2024

FSC Policy Update - Issue 82 - 24 October 2024

Welcome to Issue 82 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.

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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 Parliament.

The reforms give the Australian Accounting Standards Board (AASB) authority to set legally binding sustainability reporting standards. Government amendments were passed which included a scenario analysis disclosure requirement to 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 pre-industrial levels) and a low global warming scenario (defined as an increase of 1.5 degrees above pre-industrial levels).

The AASB has now finalised its sustainability reporting standards, located [here](#). ASIC is expected to consult on guidance shortly.

The FSC ESG Working Group is meeting frequently to discuss implementation issues for funds management and superannuation businesses.

Please contact [Jack Morgan](#) if you would like any further information.

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Public inquiry into the Compensation Scheme of Last Resort (CSLR)

The Senate Economics References Committee is holding an inquiry into the reasons for the collapse of wealth management companies, the implications for the establishment of the CSLR and challenges to its ongoing sustainability, with particular reference to Dixon Advisory. The inquiry is due to report in March 2025. The FSC is working with members to prepare a response.

Submissions close on 1 November 2024 and the terms of reference can be viewed [here](#).

Please contact [Julia Hukka](#) or [Jack Morgan](#) if you would like any further information.

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Public inquiry into the Wholesale Investor/Client Test

The Parliamentary Joint Committee on Corporations and Financial Services recently held a public hearing as part of its public inquiry into the wholesale investor/client test. On 4 October 2024, representatives from the FSC attended and gave evidence in line with the FSC's previous submission to the Managed Investment Scheme review.

Please contact [Jack Morgan](#) if you would like any further information.

Cybersecurity Legislation introduced into Parliament

Minister for Cybersecurity, Tony Burke, introduced new legislation into Parliament to begin given effect to the Government's National Cybersecurity Strategy 2023-2030. The Cyber Security Bill 2024 gives effect to four main areas:

- Establishing the power to mandate security standards for smart devices that are either internet- or network-connectable;
- Introducing a mandatory reporting obligation for entities who are affected by a cyber incident, receive a ransomware demand and elect to make a payment or give **benefits** in connection with that cyber security incident;
- Establishing a 'limited use' obligation that restricts how cyber security incident information provided to the **National Cyber Security Coordinator** during a cyber security incident can be used and shared with other government agencies, including regulators; and;
- Establishing a **Cyber Incident Review Board** to conduct post-incident reviews into significant cyber security incidents.

The FSC will monitor progress of the legislation.

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

Superannuation legislation continues to be stalled in Parliament

There are two key pieces of superannuation legislation being considered by the Parliament, the *Objective of Superannuation Bill* and the *Better Targeted Superannuation Concessions Bill* (additional tax on superannuation balances over \$3 million).

The *Objective of Superannuation Bill* has been before the Senate since March but has not yet passed due to lack of support from the Opposition and crossbenches.

The *Better Targeted Superannuation Concessions Bill* passed the House of Representatives on 10 October, after several amendments were put up by crossbenches and the Opposition, but ultimately passed unamended. The Bill is yet to be debated in the Senate and will likely take place in the next Senate sitting period in November.

Please contact [Aidan Johnson](#) if you would like any further information.

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SUPERANNUATION

Government Releases Response to Payday Super Consultation

In September the Government released its response to the Payday Super Consultation. The key points from the response are:

- The Government will pursue the ‘due date’ model, meaning superannuation contributions must be received within the superannuation fund for allocation within 7 calendar days of payday. The employer will become liable for the SG charge after 7 days has elapsed. This was the model the FSC supported in its submission.
- The deadline for superannuation funds to allocate or return contributions will be reduced to 3 business days, down from 20. This is consistent with FSC advocacy which noted the delay in time to return funds that cannot be allocated to the respective employers would increase the complexity of implementing payday super, as errors would compound with more frequent contributions.
- Advertising of superannuation products during onboarding will be restricted to MySuper products, specifically those which have passed the most recent performance test. The original proposal was a complete ban on the advertising of superannuation products at onboarding, however, the FSC has been advocating for a middle ground such as this.

The FSC is expecting Exposure Draft Legislation to be released for consultation in the next few months and will remain close to the relevant Departments working on implementation of technical standards, including the ATO.

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

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Government consults on draft regulations for conversion of some legacy pension products

In September, the Government released draft regulations aiming to allow for the conversion of certain types of legacy pension products, supporting the implementation of a 2021-22 Budget measure.

The regulations would apply to legacy lifetime, life expectancy, and market-linked superannuation income stream products that commenced prior to 20 September 2007 and would allow for consumers to exit these products for up to five years. The draft regulations would also allow for more flexible pathways to make allocations from a reserve.

The FSC made a [submission](#) to the consultation supporting the draft regulations but calling out the need for a more comprehensive suite of measures to allow for product modernisation for superannuation and investment products to allow consumers to more broadly move into cheaper, more efficient products across the market. The FSC's submission also raised several technical points such as providing clarity on what consumers can use the resulting capital to purchase and the implications on transfer balance caps.

The FSC suggested further amendments to relevant sections of social security and veteran's entitlements legislation to allow for broader use of the proposed scheme, noting many consumers may remain financially disadvantaged in the absence of these amendments.

Please contact [Aidan Johnson](#) if you would like any further information.

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APRA continues to consult the FSC on the superannuation data transformation project

While APRA recently released a [response to consultation](#) to part of its 'Phase 2: Depth' consultation, they are continuing to consult with the FSC on several key components of the consultation on investments and registrable superannuation entity (RSE) and RSE licensee profile.

APRA presented some key changes made since their original draft reporting standards to the FSC's Superannuation Data Transformation Working Group, which included changes around valuations, liquidity and RSE licensee profile.

The FSC has provided APRA with feedback on these key changes which included strong support for the removal of investment vehicle exposures data and sub-plan reporting, but also comprised of feedback on areas where further clarity is needed or where implementation of the standards would remain difficult, particularly for platform

product providers. This included their proposal of an ‘order of asset liquidation’ process and their proposal to classify the ‘top 20 assets’ for materiality purposes.

APRA is continuing to consult with industry on these components of the consultation and intends to release a response to these components by the end of the year.

Please contact [Aidan Johnson](#) if you would like any further information.

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New CPS 230 Guidance Notes

The FSC has released two new guidance notes relating to the implementation of CPS 230.

GN 52: [FUND MANAGER DUE DILIGENCE \(INCLUDING CPS 230\) QUESTIONNAIRE](#) provides a due diligence checklist specific for fund managers who are captured as material service providers under the new Standard.

GN 53: [CPS 230 CRITICALITY AND MATERIALITY GUIDANCE](#) provides potential approaches to the key concepts of materiality and criticality under CPS 230.

Both Guidance Notes are available on the [FSC website](#).

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

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New Guidance Note for Information Security Management Attestation

The FSC has published a new Guidance Note in relation to the due diligence and attestation of information security and cyber security management third parties. GN 54: THIRD-PARTY DUE DILIGENCE AND ATTESTATION QUESTIONNAIRE is available on request.

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

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INVESTMENTS

Future Made in Australia “Front Door”

On 13 September, Treasury released a [consultation paper](#) setting out options for the “Front Door” mechanisms for major, transformational projects to be supported under the Future Made in Australia policy.

In its submission, the FSC argued strongly in favour of enshrining competitive neutrality in the Front Door’s legislative framework. The FSC argued the available capital pool will

be maximised if the Front Door remains agnostic to whether a fund is large or small, global or domestic. The Front Door should not privilege particular types of funds over each other, aside from ensuring that they are capable of (individually or with proposed co-investors or other proponents) delivering a project.

The FSC also advocated the inclusion of transparent and objective prioritisation criteria, recruiting and empowering senior case managers, and reforming tax and foreign investment law barriers to investment. Other recommendations included the publication of clear KPIs, to review the scheme periodically to ensure it operates as intended, and to incorporate an advisory board which includes industry representatives to help maintain a dynamic feedback loop.

The FSC's submission can be viewed [here](#).

Please contact [Jack Morgan](#) if you would like any further information.

Sustainable Finance Roadmap

Treasury has commenced initial targeted consultation with stakeholders on elements of the [Sustainable Finance Roadmap](#), including to develop guidance on transition planning and on a product labelling framework for sustainable and responsible investment products.

In particular, the FSC supports an approach to product labelling that allows for a range of objectives and methodologies, enabling the development of products that address a variety of individual preferences and strategies. This will enable investors to make informed decisions on investing their capital in line with their values and goals.

The FSC will provide feedback into these processes ahead of public consultation on these components of the Roadmap, which is expected to commence in early 2025.

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ASX consultation re pricing policy

The ASX is consulting on proposed changes to its pricing policy. In short, from 1 January 2025 the ASX is proposing to move onto a building block model to price its clearing, settlement and issuer services.

Further details can be found in its [consultation paper](#) and accompanying [Q&As](#).

Please contact [Jack Morgan](#) if you would like any further information.

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ADVICE

Quality of Advice Review Implementation

The FSC continues to engage the Government and Treasury on aspects of the Tranche 2 Delivering Better Financial Outcomes reforms. Elements of the package will include abolishing statements of advice, introducing superannuation nudges, confirming consistent rules on the topics that can be paid for via superannuation, modernising the best interests obligations for advice and the introduction of a new class of adviser. Discussion on the policy design will be occurring over the next few months, particularly around the modernised best interest duty and the new class of adviser.

Please contact [Harvey Russell](#) if you would like any further information.

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Regulatory guidance updates

Following the Tranche 1 changes, ASIC published Information Sheet 286 *FAQs: Ongoing fee arrangements and consents* ([INFO 286](#)) and Information Sheet 287 *FAQs: Non-ongoing fee requests or consents* ([INFO 287](#)). The guidance in these Sheets will apply to fee arrangements entered into on or after 10 January 2025 (the start day) and after certain events following the start day for arrangements already in force on that day.

ASIC also updated the notes to Information Sheet 256 *FAQs: Ongoing fee arrangements* ([INFO 256](#)) and Information Sheet 280 *FAQs: Non-ongoing fee consents* ([INFO 280](#)). The guidance in these Sheets will generally continue to apply to fee arrangements entered into or last renewed before the start day. By November 2024, ASIC intends to issue new guidance on ongoing fee arrangements and requests or consents to deduct fees or costs under non-ongoing fee arrangements to reflect the changes as a result of the DBFO Act.

ASIC also intends to issue a new Information Sheet on FSGs and the new website disclosure information. This Sheet will replace the guidance on FSGs in Section C of Regulatory Guide 175 *Licensing: Financial product advisers—Conduct and disclosure* ([RG 175](#)).

ASIC will also issue a new Information Sheet on the informed consent obligation for certain insurance commissions and will be updating Regulatory Guide 246 *Conflicted and other banned remuneration* ([RG 246](#)) to reflect changes in the conflicted remuneration obligations and will make consequential amendments to other guidance.

The FSC has provided feedback to these regulatory guidance updates.

Please contact [Harvey Russell](#) or [Julia Hukka](#) if you would like any further information.

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Tax deductibility of Advice.

The Australian Taxation Office's (ATO) [final determination](#), released on 25 September, confirmed financial advice fees for tax (financial) advice are deductible under section 25-5 of the Income Tax Assessment Act if provided by a Qualified Tax Relevant Provider (QTRP). However, it maintains that initial advice fees are considered capital expenses and are not deductible, while ongoing financial advice fees remain deductible.

Please contact [Harvey Russell](#) if you would like any further information.

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ASIC trials new licensee portal

ASIC has launched a trial of its new Licensee Portal, aimed at streamlining the regulatory interactions between financial services licensees and ASIC. This development is a part of ASIC's ongoing efforts to modernise and improve the efficiency of regulatory processes and to enhance compliance oversight. The new portal will allow licensees to manage key reporting, regulatory filings, and updates more efficiently, reducing paperwork and delays. The portal is scheduled to go live in the first quarter of 2025.

Please contact [Julia Hukka](#) if you would like any further information.

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TECHNOLOGY AND INNOVATION

Government Releases Exposure Draft Legislation for new Anti-Scams Framework

The Government has begun consultation on its proposed anti-scams framework, known as the Scams Prevention Framework.

The proposed Framework includes high level principles which would be inserted into the Australian Consumer Law and administered by the ACCC. Under the principles, individual industries would also have specific codes administered by relevant regulators. There would also be an external dispute resolution mechanism, which is proposed to be managed by AFCA.

Under the proposed Framework, the Minister would have to designate industries which would be captured by both the Consumer Law principles and an individual industry code. Currently, the industries which will be designated from commencement will be the banking, telecommunications, and digital platforms (social media) industries, with superannuation expected to be designated in the future.

The FSC made a [submission](#) to the consultation highlighting that there was significant overlap in the proposed framework and the existing AML/CTF reporting regime which could create extra reporting burden, with little consumer benefit. The FSC has also called for Government to consider all of the various concurrent legislative changes happening in the scams and fraud space across privacy, AML/CTF and cyber security portfolios to ensure consistency of messaging and approach.

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

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Government Consults on Guardrails for High Risk AI Uses

The Government has released a Proposals Paper in relation to managing the risks of AI use in Australia. The Proposals Paper outlined a potential definition of ‘high-risk’ AI utilising a principles-based approach that focused on the impacts of the AI. If a use-case is considered AI under these principles, the Proposals Paper then outlined a list of mandatory guardrails that would need to be applied to the development and deployment of that AI use-case.

The FSC is supportive of the proposed approach if it provides clarity and certainty to industry about how it can use AI in Australia and does not unnecessarily impede uptake of the new technology. The FSC’s [submission](#) noted that much more clarity is needed as the principles outlined were quite broad. For example, impacts on human rights is a consideration as to whether something might be considered high-risk, which is not a well-defined concept in Australian law.

Further, the FSC highlighted the importance of clearly outlining the obligations for deployers and developers and how these obligations might apply in various circumstances such as if one was based overseas and would not be captured by the regime or where both were the same or connected entities.

The FSC will continue to work with Government as it moves to implement its AI agenda.

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

- ***Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill (Bill) introduced***

The Government introduced its long-awaited [*Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill*](#) into Parliament on 11 September.

The Bill would reform Australia's anti-money laundering and counter-terrorism financing regime, which is principally comprised of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (the AML/CTF Act) and accompanying AML/CTF Rules. The reforms are intended to ensure that Australia's AML/CTF regime meets international standards set by the Financial Action Task Force (FATF), thus reducing the risk of a "grey listing" by FATF (noting that the next mutual evaluation by FATF is due in 2026-27).

The three stated key objectives of the Bill are:

- to extend the AML/CTF regime to certain higher-risk services provided by 'tranche two' entities (e.g. real estate professionals, professional service providers and dealers in precious stones and metals)
- to improve the effectiveness of the AML/CTF regime by making it simpler and clearer for businesses to comply with their obligations, and
- to modernise the regime to reflect changing business structures, technologies and illicit financing methodologies.

The Bill has been referred to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry and report by 13 November 2024, and the FSC is working with members on preparing a submission. If the Bill passes, the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* will contain the high-level, risk-based outcomes for AML/CTF obligations, with further detail in the AML/CTF Rules.

The AGD has indicated that AUSTRAC intends to commence engagement on the AML/CTF Rules before the end of the year. During the implementation and transition period, AUSTRAC will also work with FSC and other industry members and others on new guidance and education materials.

AUSTRAC has also confirmed to the FSC it intends to consult with us on draft AML/CTF Rules and guidance material. AUSTRAC will also undertake education campaigns. AUSTRAC is developing a timetable for all of this work if the Bill becomes law.

▪ **AUSTRAC guidance**

[AUSTRAC](#) has published new guidance to help identify and manage the risks of outsourcing. The guidance confirms that it is the responsibility of businesses to ensure they meet their AML/CTF obligations when outsourcing, noting that they will generally remain legally liable for any breach of their AML/CTF obligations, even under outsourcing arrangements, and will incur any penalty that arises from a breach.

AUSTRAC has also published [new lists of suspicious activity indicators](#) to help reporting entities identify potential money laundering, terrorism financing and other serious and organised criminal activity. These sector-specific indicators are intended to help identify circumstances that could be suspicious in nature or that could indicate criminal activity.

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

The FSC is continuing to collaborate with members to prepare a written submission to AUSTRAC which includes a form of application for a general temporary exemption from certain obligations under the AML/CTF Act and accompanying rules. The submission discusses the problems facing certain funds in circumstances where scheme operators have not received typical customer information (on the basis that investors have not been required to complete an application form when using the service).

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Privacy reform

The [Privacy and Other Legislation Amendment Bill 2024](#) (the Privacy Bill) was introduced into Parliament in mid-September.

The draft legislation represents a first tranche of reforms to the Privacy Act 1988 to implement some of the proposals that were agreed by the Government in its September 2023 Response to the Privacy Act Review.

It contains measures to enhance the privacy of individuals with respect to their personal information, a new statutory tort for serious invasions of privacy, and targeted criminal offences to respond to doxing. That said, many of the proposals contained in the Privacy Act Review have not been included in the bill (for example, including a right to erasure similar to that contained in European law, greater restrictions on targeted and direct marketing, and increased prescription for the content of privacy policies and collection notices) and accordingly it remains to be seen if and when future draft legislation will adopt these recommendations.

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Design and distribution obligations

On 24 September ASIC published [Report 795 Design and distribution obligations: Compliance with the reasonable steps obligation](#).

ASIC reviewed compliance with the reasonable steps obligation by 19 issuers of high-risk investment products, accident and funeral insurance, and medium amount credit

contracts. The products in the review had a narrow target market, where more steps are required to distribute a product consistently with the TMD. Most issuers reviewed (18) were a distributor for their product(s). Some issuers also used third-party distributors. A variety of channels and methods were used to distribute products.

ASIC also published its revised [RG274](#) on the same day. The changes are largely in line with the draft proposals that ASIC shared with the FSC in previous discussions and which members had an opportunity to comment on, with the main point of interest being the change made with regards to the “appropriateness requirements”.

The FSC is considering with members whether any consequential changes need to be made to the FSC suite of target market determination templates to address the new guidance on appropriateness.

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Financial Accountability Regime (FAR)

APRA and ASIC hosted webinars on superannuation, general insurance and life insurance in mid-September. The webinars explained key activities and timeframes to FAR commencement, with practical insights to assist entities with implementation. A recording of the presentations, and a copy of the slide pack, are now available on the FAR Presentations page on APRA’s website.

Impacted businesses next need to complete their FAR entity profile information in APRA Connect from 18 November to 20 December 2024. Invitations to a FAR drop-in session will be sent closer to this submission window, where regulated entities will be able to ask FAR entity profile questions in real time.

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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Derivatives

ASIC published guidance to support the *ASIC Derivative Transaction Rules (Reporting) 2024 (2024 Rules)* and confirmed they will take a measured approach to compliance until March 2025. This follows various discussions between the FSC and ASIC during which the FSC advocated for such a measured approach, given the challenges in implementing the Rules.

ASIC’s new [Regulatory Guide 251 Derivative transaction reporting \(RG 251\)](#) explains the derivative transaction reporting regulatory regime and give targeted guidance to help reporting entities understand how to comply with their reporting obligations under the 2024 Rules.

ASIC have also indicated they expect to publish further technical guidance materials shortly.

Please contact [Ashley Davies](#) if you would like any further information.

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Breach Reporting (Reportable Situations)

The FSC is nearing completion of its research project to advance the evidence base for our advocacy on reforms to simplifying breach reporting regulations.

Positive Economics Advisory is preparing a detailed Report on its findings which is expected to consider the compliance costs of the current regime and the potential compliance cost savings of the FSC's proposed recommendations to streamline the regime.

Please contact [David Williams-Chen](#) if you would like any further information.