

March 2017

PwC Regulatory Update



1

Legislative/Government developments

Treasury Laws Amendment (Innovative Superannuation Income Streams) Regulations 2017

The Minister for Revenue and Financial Services has released [*Treasury Laws Amendment \(Innovative Superannuation Income Streams\) Regulations 2017*](#) for consultation, seeking feedback on:

- Continued implementation of the superannuation reforms; and
- Introduction of a new set of design rules for lifetime superannuation income stream products.

The regulations are intended to cover a range of innovative income stream products including deferred products, investment-linked pensions and annuities and group self-annuitised products.

Submissions are due by 12 April 2017.

Source: [Treasury](#)

Government consults on ASIC's review of mortgage broker remuneration

The Government is consulting on ASIC's [*Review of Mortgage Broker Remuneration*](#), which outlines a number of proposals, including:

- Improving the standard commission model for mortgage brokers;
- Moving away from bonus commissions and soft-dollar benefits;
- Increased disclosure of mortgage broker ownership structures; and
- Improving lender and aggregator oversight of mortgage brokers.

Submissions are due by 30 June 2017.

Source: [Treasury](#)

Government introduces Harper Review legislation to strengthen competition

The Government has introduced a significant package of legislation to strengthen competition law by implementing the recommendations of the Harper Competition Policy Review which include:

- Replacing the never-used and unworkable price-signaling provisions with a general prohibition on concerted practices with the purpose, effect or likely effect of substantially lessening competition;
- Folding the merger clearance and authorisation processes into the general authorisation process;
- Enabling the ACCC (Australian Competition and Consumer Commission) to issue class exemptions, providing safe harbours for conduct that does not raise competition concerns;
- Simplifying complex provisions relating to authorisations;
- Broadening the joint venture exemptions to the cartel conduct prohibitions, to better reflect the reality of how joint ventures operate; and
- Changing declaration criteria to make the National Access Regime more effective.

Source: [Treasury](#)

1

Legislative/Government developments

Government introduces the ASIC Supervisory Cost Recovery Levy Bill 2017

The Government has introduced the [ASIC Supervisory Cost Recovery Levy Bill 2017](#) and related bills to implement an industry funding model for ASIC.

Industry funding for ASIC will improve consumer outcomes in the financial services sector, and builds on other measures, including:

- The \$127.2 million ASIC funding package, to enhance the regulator's data analytics and surveillance capabilities, to facilitate proactive enforcement activities, and to accelerate other consumer protection measures recommended as part of the Financial System Inquiry;
- A comprehensive review of ASIC's enforcement regime to ensure the regulator has the powers and penalties available to it to deter misconduct and foster consumer confidence; and
- The ASIC Capability Review, which was undertaken to ensure that ASIC is operating in line with global best practice.

Source: [Minister for Revenue and Financial Services](#)

The CFR (Council of Financial Regulators) consults on safe and effective competition in cash equity settlement in Australia

The CFR and the Australian Competition and Consumer Commission have released a [consultation paper](#), *Safe and Effective Competition in Cash Equity Settlement in Australia*, seeking feedback on:

- Developing policy guidance to ensure that any such competition is safe and effective; and
- Exploring possible implications of competition in settlement of cash equities for the functioning of markets, financial stability and access in Australia.

Submissions are due by 20 April 2017.

Source: [CFR](#)

The Productivity Commission releases draft stage two report, Superannuation: Alternative Default Models

The Productivity Commission has released draft stage two [report](#), *Superannuation: Alternative Default Models*, outlining four possible alternative models for allocating default superannuation. It also highlights that the current default model is not working to maximise benefits for members, including their retirement income.

The final stage two report is due to be released in August 2017, with the stage three report commencing in the second half of 2017.

Submissions are due by 28 April 2017.

Source: [Productivity Commission](#)

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What have the regulators been up to?

APRA

Australian Prudential
Regulation Authority

ASIC

Australian Securities and
Investments Commission

ASX

Australian Securities
Exchange

AUSTRAC

Australian Transaction
Reports and Analysis
Centre

RBA

Reserve Bank of Australia

APRA releases *Private Health Insurance (Registration) Rules 2017*

APRA has released *Private Health Insurance (Registration) Rules 2017*, replacing the *Private Health Insurance (Registration) Rules 2015*. These rules apply to restricted access insurers and companies seeking registration as private health insurers under Division 3 of Part 2 of the Private Health Insurance (Prudential Supervision) Act 2015.

The rules provide the following:

- Criteria for registration;
- Description of groups who can be offered insurance products by restricted access insurers;
- Limits on insurance provided by restricted access insurers; and
- Transition arrangements.

See [rule](#)

APRA consults on proposed revised liquidity reporting requirements

APRA has released a letter to all authorised deposit-taking institutions (ADIs) in relation to consultation on proposed revised liquidity reporting requirements, seeking feedback to align the reporting requirements for liquidity with the revised APS 210. The revised [reporting requirements](#) and the revised prudential standard will come into effect from 1 January 2018.

See [letter](#)

APRA releases letter to ADIs in relation to review of prudential requirements for traded market risk and announces further measures to reinforce sound residential mortgage lending practices

APRA has released a [letter](#) to all ADIs in relation to a review of prudential requirements for traded market risk. APRA is advising affected ADIs that the new market risk standard, *Minimum capital requirements for market risk (Fundamental Review of the Trading Book, or FRTB)* will not be finalised until the beginning of 2020. ADIs will have 12 months for its implementation. APRA has decided to take this approach to understand complexities associated with implementation and of the alignment between FRTB and related reforms including those associated with counterparty credit risk.

APRA has written a [letter](#) to all ADIs highlighting further measures to reinforce sound residential mortgage lending practices, expecting ADIs to:

- Limit the flow of new interest-only lending to 30% of total new residential mortgage lending;
- Manage lending to investors in such a manner so as to comfortably remain below the previously advised benchmark of 10% growth;
- Review and ensure that serviceability metrics are set at appropriate levels for current conditions; and
- Continue to restrain lending growth in higher risk segments of the portfolio.

See [media release](#)

The Government [welcomes](#) these additional supervisory measures announced by APRA

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ASIC issues new guidance on risk management systems of responsible entities and updates its guidance on conduct and disclosure obligations for financial advisers

ASIC has released a [regulatory guide](#), *Risk Management systems of responsible entities*, providing specific guidance on how these entities may comply with their obligation under the *Corporations Act 2001* to maintain adequate risk management systems.

ASIC has updated [regulatory guide](#), *Licensing: Financial product advisers - conduct and disclosure*, guiding how certain conduct and disclosure obligations under the *Corporations Act 2001* apply to the provision of financial product advice. This is a guide for persons who provide financial product advice to retail clients, and their professional advisers.

See [media release](#)

ASIC consults on remaking class order about licensing relief for trustees of wholesale equity schemes

ASIC has released a [consultation paper](#), *ASIC class order on wholesale equity schemes: Licensing relief for trustees*, seeking feedback from trustees and managers of wholesale equity schemes and other stakeholders on their proposals to either remake into or repeal class order. This instrument grants relief to the trustees from the requirement to obtain an Australian financial services (AFS) licence in the circumstances specified in the instrument.

Submissions are due by 20 March 2017.

See [media release](#)

ASIC reports on how large financial advice firms deal with advisers

ASIC has commenced a project in 2015 to review how effectively the largest financial institutions oversee their financial advisers. ASIC has published a [report](#), *Financial advice: Review of how large institutions oversee their advisers*, outlining ASIC's observations and findings from this project, and providing an update on the actions of the largest advice institutions to address customer loss or detriment. The report will assist the financial advice industry as a whole to raise its standards and reduce risk.

ASIC has identified a number of areas of concern where further improvements need to be made, including:

- Failure to notify ASIC about serious non-compliance concerns regarding adviser conduct;
- Significant delays between the institution first becoming aware of the misconduct and reporting it to ASIC;
- Inadequate background and reference checking processes; and
- Inadequate audit processes to assess whether the advice complied with the 'best interest' duty and other obligations.

See [media release](#)

The Government [welcomes](#) ASIC's review into financial advice firms.

ABA (Australian Bankers' Association) [responds](#) to financial advice compliance report.

FPA (Financial Planning Association of Australia) [acknowledges](#) findings of ASIC report into how large institutions oversee financial advisers.

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ASIC establishes Financial Advisers Consultative Committee

ASIC has announced the establishment of the Financial Advisers Consultative Committee (FACC) to improve industry engagement with its regulator.

The FACC will supplement ASIC's existing engagement with the financial advice industry by:

- Contributing to ASIC's understanding of issues in the financial advice industry, including those directly impacting on practicing advisers; and
- Improving ASIC's capacity to identify, assess and respond to emerging trends in the financial advice industry.

See [media release](#)

ASIC comments on the passage of client money reforms by Parliament

ASIC has welcomed the passage of client money reforms contained in the *Treasury Laws Amendment (Measures No. 1) Bill 2016 (Bill)*, removing an exception in the client money regime that allows AFS licensees to withdraw client money provided in relation to retail OTC derivatives from client money trust accounts, and use it for a wide range of purposes including as working capital.

The Bill also gives ASIC the power to write client money reporting and reconciliation rules.

See [media release](#)

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The ASX consults on OTC rule and handbook amendments related to default management processes

The ASX has released its [response](#) to [consultation](#) on the business requirements for the replacement of CHESSE, providing a summary of the feedback provided by respondents and outlining the key actions that ASX is undertaking in response to the feedback.

Respondents indicated that additional information and detail was required in order for them to fully assess the benefits of particular business requirements and to provide detailed feedback.

Some respondents raised complex issues that would require support from a number of different users in order to make changes to existing market practices. These extend beyond the functionality of the CHESSE system and the ASX will explore this further with users throughout 2017.

See [media release](#)

The ASX consults on OTC Rule and Handbook amendments related to the Client Clearing API and Multilateral Compression Service

The ASX has released a [consultation paper](#), *Consultation on OTC Rule and Handbook amendments related to the Client Clearing API and Multilateral Compression Service*, seeking feedback from OTC participants in relation to ASX's proposal to introduce a best practice OTC client clearing workflow for trade submission (Client Clearing API) and a multilateral compression service in the second quarter of 2017. Submissions are due by 5 May 2017.

See [media release](#)

AUSTRAC shares insights from compliance assessments

AUSTRAC has published a [report](#), *Insights from compliance assessments*, drawing observations made by AUSTRAC during recent assessments of reporting entities' compliance with their anti-money laundering and counter-terrorism financial (AML/CTF) obligations and breach notifications received from reporting entities.

The feedback offers suggestions for all reporting entities to:

- Strengthen their AML/CTF systems and controls;
- Better mitigate and manage the risks they face; and
- Improve their compliance with relevant legislation.

AUSTRAC has identified four key areas where reporting entities can improve their AML/CTF outcomes:

- ML/TF risk assessments;
- Applying the risk-based approach to AML/CTF;
- Outsourced and automated processes; and
- Governance issues.

See [media release](#)

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Speech: The FX Global Code of Conduct – Final Phase

RBA Deputy Governor, Guy Debelle, addressed the FX Week Australia (2017) Conference in Sydney. He discussed the topic, *The FX Global Code of Conduct – Final Phase*.

Key issues covered in the speech included:

- The Code sets out global principles of good practice in the FX market to provide common guidance to the market, including in areas where there is a degree of uncertainty about what sort of practices are acceptable, and what are not. This should help to restore confidence and promote the effective functioning of the wholesale FX market.
- The RBA has been devoting considerable time and effort to thinking about how to ensure widespread adoption of the Global Code by market participants, as well as drafting the Code.
- The complete Code is on track to be released in London in May 2017. The Code will need to be accepted and endorsed across the full spectrum of market participants for it to be effective and achieve its purpose. The Code will evolve as the foreign exchange market continues to evolve.

The full speech can be found [here](#).

3

Industry bodies

ABA

Australian Bankers'
Association

FPA

Financial Planning
Association of Australia

FSC

Financial Services Council

ABA responds to Code of Banking Practice review

The ABA comments on the Code of Banking Practice review, supporting the majority of its recommendations. Some of the changes customers can expect in a new Code include:

- Plain-English language so that Australians can better understand their banking rights and responsibilities;
- An easier way to cancel credit cards or reduce the credit limit, and a commitment by banks when offering cards to assess someone's ability to pay the full credit limit in a reasonable time period;
- A new dedicated section for small businesses, and a commitment by banks to simplify terms and conditions and give more notice when loan contracts change; and
- Increased help for people experiencing, or at risk of, financial difficulty, so they can take control of their finances.

See [media release](#)

3

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Financial Services Council

FPA recommends affordable financial advice

The FPA is recommending that the preparation of an initial financial plan and ongoing management fees or annual retainer fees should be tax deductible in a pre-budget submission to the Federal Government.

Currently, a fee for service arrangement for the preparation of an initial financial plan is stated by the Australian Taxation Office to be not tax deductible under section 8-1 of the *Income Tax Assessment Act 1997*.

See [media release](#)

Life insurance and superannuation bodies release group insurance data collection guidance

Australia's life insurance and superannuation bodies have released their group insurance data collection [guidance note](#) to improve the quality and availability of group insurance data for use in the tendering process, renewal pricing and reserving, and more generally by super funds and insurers. It is designed to result in more accurate and fair pricing, improve industry sustainability and increase regulator confidence in the industry.

See [media release](#)

Insurance in Superannuation Working Group (ISWG) discussion paper

The ISWG has released the [first](#) of a series of discussion papers regarding extending the Life Insurance Code of Practice to superannuation trustees, seeking feedback on the proposed solutions to balance superannuation contributions allocated to saving for retirement versus automatic insurance benefits.

The ISWG is identifying changes that can improve superannuation member value and protections. Priorities include:

- Reducing benefit erosion on superannuation account balances for members, including establishing the right level of automatic cover for young people and low income earners;
- Reducing inappropriate multiple insurance policies;
- Providing better and more timely assistance to members during claims;
- Improving superannuation fund member communications on insurance;
- Improving data standards to improve service to members; and
- Undertaking independent research on the costs and benefits of group insurance within superannuation.

See [media release](#)

4

Overseas developments – Global

BIS: Recent consultations

The Basel Committee has published a [consultation paper](#), *Global systemically important banks - revised assessment framework*, seeking feedback on the following modifications to the framework:

- Removal of the cap on the substitutability category and expansion of the scope of consolidation to include insurance subsidiaries;
- Amendments to the definition of cross-jurisdictional activity;
- Modification of the weights in the substitutability category and introduction of a trading volume indicator; and
- Further guidance on bucket migration and the associated surcharge.

Submissions are due by 30 June 2017.

The Basel Committee has also published a [consultation paper](#), *Identification and management of step-in risk*, seeking feedback on mitigating potential spillover effects from the shadow banking system to banks.

Source: [BIS](#)

FSB: Recent consultations

The Financial Stability Board (FSB) has published a [consultation paper](#), *Proposed governance arrangements for the unique transaction identifier (UTI)*, setting out proposals for the governance arrangements for a global UTI to facilitate effective aggregation of transaction reports about over-the-counter (OTC) derivatives markets.

The FSB proposes that the governance arrangements should seek to avoid unnecessary complexity and should take due account of existing resources and arrangements where possible in order to maximise the benefits and minimise the costs and burdens associated with the use of the UTI.

Submissions are due by 5 May 2017.

Source: [FSB](#)

4

Overseas developments – Europe

EBA: Recent announcements

The European Banking Authority (EBA) has published its final draft Regulatory Technical Standards (RTS) on the disclosure of encumbered and unencumbered assets for the provision of transparent and harmonised information, as laid down in the Capital Requirements Regulation (CRR).

The EBA has published an [Opinion](#) addressed to all competent authorities across the EU on transitional arrangements and credit risk adjustments to mitigate the effect of IFRS 9 on prudential ratios.

The EBA has published its final [guidelines](#) on liquidity coverage ratio (LCR) disclosure, providing harmonised disclosure templates and tables for LCR disclosure and improving transparency and comparability of LCR and other liquidity risk management related information.

Source: [EBA](#)

ESMA: Recent announcements

The European Securities and Markets Authority (ESMA) has published its final [report](#) containing the draft technical standards under the Benchmarks Regulation (BMR), ensuring:

- The full process of provision of a benchmark is checked by a new oversight function that administrators have to establish;
- The potential manipulation of benchmarks is minimised, through new rules regarding the methodology of calculation and the contribution of input data;
- That conflicts of interest of administrators and contributors are properly managed; and
- A level playing field across different Member States for the authorisation and registration of benchmark's administrators.

Source: [ESMA](#)

4

Overseas developments – UK

FCA: Recent announcements

The Financial Conduct Authority (FCA) has published the [first](#) of its two consultation papers on the implementation of the Insurance Distribution Directive (IDD), concerning the distribution of insurance and reinsurance. The consultation paper includes the following areas:

- Professional and organisational requirements;
- Complaints handling and out-of-court redress;
- Professional indemnity insurance (PII);
- Changes to conduct of business rules (for non-investment insurance contracts); and
- The regulatory regime for ancillary insurance intermediaries.

The FCA has published near [final rules](#) on the implementation of the Markets in Financial Instruments Directive (MiFID) II, including changes to the trading of financial instruments including issues affecting trading venues, transparency of trading and algorithmic and high frequency trading.

Source: [FCA](#)

PRA: Consultation on regulated fees and levies - rates proposals

The Prudential Regulatory Authority (PRA) has released a [consultation paper](#), *Regulated fees and levies: rates proposals 2017/18*, seeking feedback on proposals for the PRA's fees and levies for 2017/18.

The proposals include:

- The fee rates to meet the PRA's 2017/18 Annual Funding Requirement (AFR);
- Amendments to the ring-fencing implementation fee rules;
- Amendments to the rules and supervisory guidance concerning Special Project Fees for restructuring;
- How the PRA intends to manage a shortfall from the 2016/17 AFR and distribute a surplus on the ring-fencing implementation fee; and
- How the PRA intends to distribute the retained penalties for 2016/17.

Submissions are due by 24 May 2017.

Source: [Bank of England](#)

PRA: Consultation on internal ratings based (IRB) approach

The PRA has released a [consultation paper](#), setting out proposed changes to supervisory statement, *IRB approach*, clarifying the PRA's expectations for firms applying for IRB model approval as to:

- How they can demonstrate that they meet the requirements of the Capital Requirements Regulation (CRR) on 'prior experience' of using IRB approaches; and
- On the use of external data to supplement internal data for estimating Probability of Default (PD) and Loss Given Default (LGD) for residential mortgages.

Submissions are due by 28 June 2017.

Source: [Bank of England](#)

4

Overseas developments – US

OCC: Banking agencies issue joint report under EGRPRA

The banking agencies have issued a joint [report](#) under the Economic Growth and Regulatory Paperwork Reduction Act of 1996, detailing their review of rules affecting financial institutions. The report notes several joint actions planned or undertaken by the federal financial institutions regulators including:

- Simplifying regulatory capital rules for community banks and savings associations;
- Streamlining reports of condition and income (Call Reports);
- Increasing the appraisal threshold for commercial real estate loans; and
- Expanding the number of institutions eligible for less frequent examination cycles.

Source: [OCC](#)

SEC: Adopts T+2 settlement cycle for securities transactions

The SEC (Securities and Exchange Commission) has adopted an amendment to shorten the standard settlement cycle by one business day for securities transactions.

The standard settlement cycle for these transactions is three business days currently, known as T+3. The amended rule shortens the settlement cycle to two business days, T+2.

Source: [SEC](#)

4

Overseas developments – Asia

Hong Kong: Recent announcements by SFC

The Securities and Futures Commission (SFC) [reminds](#) market participants that reporting will be required for reportable short positions in all designated securities eligible for short selling specified by The Stock Exchange of Hong Kong Limited with effect from 15 March 2017, following the completion of a two month pilot test of the Short Position Reporting Service.

The SFC has published [conclusions](#) to a consultation to expand the scope of the position limit regime, including

- 300% cap on the excess position limit that may be authorised by the SFC;
- Statutory position limit of 150,000 contracts for stock options as well as new excess position limits for index arbitrage activities, asset managers and market makers of exchange-traded funds; and
- Minimum "assets under management" requirement applicable to asset managers will be lowered from \$100 billion to \$80 billion.

Source: [SFC](#)

Singapore: Recent announcements

The Monetary Authority of Singapore (MAS) has [announced](#) that it is working with the industry to apply distributed ledger technology in securities settlements and cross border payments.

The MAS has released a [consultation paper](#), *Proposed Framework for Singapore Variable Capital Companies*, proposing to set up a legislative framework for a new corporate structure that is tailored for collective investment schemes. In view of the possible economies of scale that can be reaped by umbrella funds, MAS also intends to allow the segregation of assets and liabilities of sub-funds established under a single legal entity.

Source: [MAS](#)

5

PwC publications

PwC US: Deposit account screening - the CFPB is closely watching

As the Consumer Financial Protection Bureau (CFPB) continues to conduct examinations on banks' deposit account practices, PwC expect to see a greater focus on the use of consumer reporting agencies (CRAs) to screen potential customers when deciding whether or not to open a new deposit account. Banks are responsible for the accuracy of account information reported to CRAs.

In recent years, banks have enhanced risk management oversight of credit reporting practices for loan accounts, but in our experience have yet to apply the same level of attention to deposit accounts.

PwC US has released a regulatory brief, *Deposit account screening: the CFPB is closely watching*, describing the CFPB's expectations for banks' use of CRAs during deposit account administration and providing recommendations for banks to manage compliance risks.

See [publication](#)

PwC US: The supervisory framework: Building a stronger defense

As risk management frameworks for managing financial risks have become more developed, regulators are increasingly focusing on supervisors' ability to monitor non-financial risks. Not only are supervisors expected to monitor such risks, but they must do so while meeting (or exceeding) revenue expectations. Many financial institutions have adopted a front office central supervision team (CST) to assist supervisors.

The CST strengthens a supervisory framework by taking over the initial review of tasks associated with non-financial risks, while still bringing any material issues to a supervisor's attention.

PwC has published a report, *The supervisory framework: Building a stronger defense*, taking a closer look at how financial institutions are defining their supervisory framework and using a CST to enhance their non-financial risk management practices.

See [publication](#)

PwC US: Agencies' regional bank resolution feedback and FBO guidance

The Federal Reserve and Federal Deposit Insurance Corporation has released feedback on the 2015 resolution plans for 16 US regional banks:

- No deficiencies across the board, but greater guidance to two regional banks;
- Option for streamlined 2017 submissions;
- Updated guidance for regional banks' 2017 plans;
- Five regional banks need to incorporate more severe financial assumptions;
- No formal determinations for the Foreign Banking Organisations (FBO) Global Systemically Important Banks (GSIBs);
- FBO GSIBs will be held to similar standards as their domestic counterparts; and
- 15 months is a short window for the FBO GSIBs to meet these standards.

See [publication](#)

5

PwC publications

PwC US: Life after 50: What Brexit means now for US financial institutions

Now that Article 50 has been triggered, the UK and EU will negotiate pressing issues such as the movement of people, goods, services, and capital across borders. The results of these negotiations will affect many business decisions, including potential investments, human capital allocation, and contract revisions.

PwC US has published a report, *Life after 50: What Brexit means now for US financial institutions*, highlighting that with Article 50 triggered, US financial firms should evaluate exposure, stay informed, and define the path forward.

See [publication](#)

PwC / London Business School: The Pros and Cons of competition among employees

Competition between employees is an inescapable part of most people's work lives. Whether overtly or otherwise, most companies create a dynamic in which employees compete against each other for recognition, bonuses, and promotions.

What distinguishes competitions that unleash creativity from competitions that cause unethical behaviours? It depends on how the competition makes employees feel.

Some competitions elicit fear and anxiety, because they focus employees on the threat of being laid off, losing income, or being publicly humiliated. Other competitions focus employees on winning a coveted bonus or public recognition, which create arousal but make people feel anticipation and excitement.

See [publication](#)

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