

What's ahead for property funds in 2019?

Several expected regulatory changes indicate there's little rest for unlisted property in 2019, PFA looks ahead to what we might expect.

ASIC Industry Funding Levies:

ASIC's industry funding levies are proving controversial as anecdotal evidence suggests the levies have increased compliance costs for unlisted property funds. According to ASIC, each entity's regulatory cost is determined via a combination of fixed and fluctuating levies based on submitted business activity metrics.

Reports from 2017/18 show the wealth management industry contributed \$236.6 million to the regulator – responsible entities contributed \$22.7 million, wholesale trustees \$9.38 million, while super funds, investment managers and managed accounts providers contributed \$45 million.

Reports indicate these levies are hitting retail funds the hardest as many unlisted property managers offer several retail funds, which adds up to a substantial fee.

PFA understands there has also been an increase in fees for relief applications, which may also add up quickly as managers may have relief applications which cover relief from multiple regulatory provisions at any one time and are charged for each provision.

PFA is interested in feedback on the levies:

- Are the levies meeting your expectations?
- How do the levies affect you?
- Could the levies affect returns?
- Have you needed to put in a relief request? Did it cost more than expected?

Please forward any feedback to PFA: pfa@propertyfunds.org.au

The Royal Commission's aftermath:

Hayne's final report from the Royal Commission will be highly influential across the year, and for years to come.

Vertical integration is a potential issue for some property funds that provide product and advice— as the Commission showed, problems with vertical integration emerge when there is any weaknesses in governance or company culture.

More broadly, all license holders must address themes around culture, remuneration, and conflicts across the business and aim to eliminate any potential weak points.

Greater enforcement was a prevailing theme and ASIC has already stated it has an increased number of investigations underway directly resulting from the Commission. ASIC has said a number of individuals will face criminal charges. ASIC indicated it will pursue more court-based actions, which means breaches could become costly and drawn-out if mishandled.

The commission will influence regulatory change, leading to more compliance obligations for property funds: for example, ASIC's product design and distribution obligations and the ASIC enforcement review have been endorsed by the Commission. These changes will impact unlisted property funds – potentially significantly – and legislation could be passed soon.

RG 97:

ASIC released Consultation Paper 308 in early January 2019, and feedback submissions are open until 2 April 2019.

The property industry is among the biggest winners from the updated RG 97. For example, property operating and borrowing costs will not be required to be disclosed in PDSs, showing the regulator has listened to Darren McShane's recommendations.

ASIC's RG 97 proposals continue to evolve and the signs are that the regulator, in its quest to simplify fee disclosure requirements for funds, has listened to feedback and responded.

Greater compliance as product design and distribution obligations expected:

Treasury's product design and distribution Bill will have major impact on property funds.

Property Funds Association believes the draft Bill will potentially limit the choice available to retail unlisted property investors, as many unlisted property funds will find it more difficult and expensive to bring retail product to market. The Bill does not apply to wholesale products.

The Bill requires product issuers to undertake a Target Market Determination (TMD), which will be a key source of compliance angst for retail product issuers. This will add to legal and compliance costs generally, and introduces the possibility that new products will need to engage consumer testing before being taken to market.

The post-Royal Commission landscape has made higher compliance demands more palatable. It's possible these obligations will be passed as legislation during 2019. In the meantime, PFA hopes an appropriate framework and guidance will be released to provide a common approach for property funds.

CCIV open for consultation, but is the legislation close?

Government opened a revised draft of CCIV regulatory and tax legislation to private consultation, which close on 28 February 2019.

The draft includes:

- The new Chapter 8B in the Corporations Act 2001 containing the core provisions outlining the establishment of CCIVs and their operational and regulatory requirements
- Amendments to other legislation to support the implementation of CCIVs (such as amendments to the Australian Securities and Investments Commission Act 2001 and the Personal Property Securities Act 2009)

Will this be passed in 2019? Early indications are that while the CCIV bill remains in motion, it may not be passed until early 2020.

Tougher breach reporting regime and penalties for misconduct:

A new, tougher, breach reporting regime is coming. All license holders need to analyse their breach reporting and ensure they have the processes to investigate, report breaches, and process any remediation quickly.

There will be higher penalties for failures to report when required. There will also be a new civil penalty in addition to the current criminal penalties – having the civil path available could allow ASIC to pursue a higher number of penalties than previously.

On 3 December 2018, the Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Bill 2018 was introduced to the Senate. More information can be found [here](#).

The government has accepted in principle changes to the law which intend to make the breach reporting rules more easily enforceable than previously.

Property funds will need to review and update systems to ensure breaches can be identified, reported, communicated and ultimately rectified within reasonable timeframes.

Finally

What are your key concerns for 2019? PFA welcomes your feedback, please contact:
pfa@propertyfunds.org.au