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SUPERANNUATION REGULATION AND GOVERNMENT POLICY

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Our superannuation consultants provide a synopsis of regulatory and government policy changes impacting the superannuation industry.

Legislation Supporting 2017/2018 Budget Announcements

In its 2017-2018 Budget, the Government made a number of housing affordability announcements, including two that use the superannuation system[1].

Superannuation and housing

Draft Legislation supporting some of these announcements was released on 21 July 2017. The draft *Treasury Laws Amendment (Reducing Pressure on Housing Affordability) Bill 2017* and *First Home Super Saver Bill 2017* introduces:

› the First Home Super Saver Scheme (FHSSS) which allows individuals to save for their first home inside superannuation. Under the scheme, first home savers who make voluntary contributions or receive additional employer contributions (i.e. not Superannuation Guarantee or Award contributions) into their superannuation account (from 1 July 2017), would be able to withdraw those contributions and an amount of associated earnings (with concessional tax treatment), for the purposes of purchasing their first home.

› a downsizing measure which would allow individuals aged 65 years or over to make non-concessional contributions of up to $300,000 (regardless of the other contribution caps and restrictions) from the proceeds of selling their main residences to their superannuation accounts. Downsizer contributions will be able to be made regardless of the other contribution caps and restrictions that might apply to making voluntary contributions.

The Bills passed the House of Representatives on 18 October 2017 and as at mid-November is in the Senate. In anticipation of the FHSSS Bill passing, it is important that employers separately identify mandatory employer contributions and salary sacrifice contributions in payroll files sent to the fund administrators.

New framework for superannuation complaints

The Government also announced in the 2017-2018 budget that it will overhaul the dispute resolution framework. This will establish a new single one-stop shop service - the Australian Financial Complaints Authority (AFCA) from 1 July 2018. The AFCA will have the power to resolve complaints regarding banks, super funds and other financial institutions. Decisions by the AFCA will be binding on both consumers/members as well as financial services providers. The ACFA will eventually replace the Superannuation Complaints Tribunal (SCT), with a transitionary period to allow the SCT to clear its current caseload.

The draft *Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority) Bill 2017* was introduced to the Senate on 14 September 2017. The Senate Economics Legislation Committee released its report on 17 October 2017 recommending the Bill be passed by the Senate. The dissenting Labor senators on the Committee argued that the SCT should continue to deal with superannuation complaints as it would be in consumers' best interest.

1 See Russell's 2017/2018 budget announcement summary - https://russellinvestments.com/au/insights/library/2017-federal-budget-update

Legislation to improve accountability and member outcomes in super – Trustee duties

On 24 July 2017, the Government released for consultation the *Treasury Legislation Amendment (Improving accountability and member outcomes in superannuation) Bill 2017*. In introducing this Legislation, the Government believes this package will improve accountability and member outcomes.

The Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 1) Bill 2017 was introduced to the Senate on 14 October 2017 and proposes a range of amendments, including:

(i) amending the SIS Act to strengthen the obligation on superannuation trustees to consider the appropriateness of their MySuper product offering annually, replacing the current annual 'scale test' with an annual 'outcomes test';

(ii) giving APRA an enhanced capacity to refuse a registerable superannuation entity (RSE) licensee a new authority to offer a MySuper product or to cancel an existing authority;

(iii) requiring RSE licensees to hold annual members' meetings to enable members to ask questions about all areas of their RSEs performance and operation;

(iv) requiring APRA approval to change control or ownership of RSE licensee;

(v) amending the SIS Act to impose civil and criminal penalties on directors of RSE licensees who fail to execute their responsibilities to act in the best interests of members, or who use their position to further their own interests to the detriment of members; and

(vi) requiring superannuation funds to disclose, on a semi-annual basis, investments that they hold directly or indirectly and initial investments into non-associated entities ('portfolio holdings disclosure').

The Government subsequently proposed an amendment to extend the portfolio holdings disclosure requirement to all choice options. Labor's proposed amendments goes further by extending the trustees broader obligations to choice options, which would be a small but significant change.

The Bill is still before the Senate and the proposed amendments have not been voted on. In anticipation of the Bill passing, APRA to date has written three letters to all RSE licensees on the topic of trustee accountability and member outcomes. APRA has indicated that it is timely for all licensees to consider whether they need to enhance their approach to delivering quality member outcomes and maintaining the future sustainability of their RSEs. This would include consideration of whether insurance offerings may be inappropriately eroding members retirement benefits. APRA is expected to release a detailed package of draft prudential standards and guidance for further consultation.

As a part of the reform package, the Government also introduced the *Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017* to the Senate on 14 October 2017. The Bill proposes to require all trustees of registrable superannuation entities (RSE licensees) to have a minimum of one-third independent directors on their trustee board, and an independent Chair. The amendments would replace the existing equal representation rules.

Legislation to improve accountability and member outcomes in super – Employer Superannuation Guarantee and Choice of Fund obligations

The *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 2) Bill 2017* has passed the House of Representatives and is currently in the Senate. This Bill proposes the following key amendments to the Superannuation Guarantee (Administration) Act 1992:

- salary sacrifice integrity - employers will be prevented from using an employee's salary sacrifice contributions to reduce the employer's own minimum superannuation guarantee (SG) contributions; and
- choice of super fund - to be extended to employees covered by new enterprise agreements and workplace determinations made on or after 1 July 2018.

The Senate Economics Legislation Committee report (released on 23 October 2017) recommended the Bill be passed.

Retirement Products

Following the Murray Review in 2014 the Government has been exploring avenues to enhance the retirement products offered to superannuation members. The Government released a discussion paper in December 2016 exploring the development of a framework for the retirement phase. The paper covered the development of the 'Comprehensive Income Products for Retirement' recommended by Murray, relabelling them 'MyRetirement' products.

Commenting on the submissions received on the discussion paper, Minister Kelly O'Dwyer has indicated that she believes there is an absolute need to have a "retirement income framework". She noted that, as things currently stand, superannuation trustees had a number of important obligations, including considering investment strategy, risk and appropriateness of insurance but it was surprising there existed no specific obligation to consider the needs of members in retirement.

In a preliminary overview of submissions to date, Treasury has noted that there is:

- a general agreement on the importance of the MyRetirement objectives;
- much confusion around the details, i.e. there is a wide range of interpretations; and
- a lack of consensus on the best way to achieve objectives.

Treasury has also noted the following three significant issues that have been highlighted in the consultation process thus far:

- desire for superannuation funds to offer multiple MyRetirement products;
- determining who should and should not be offered a MyRetirement product; and
- likely extent of take-up (trustees and members) and effectiveness of the "nudge" into MyRetirement products.

Treasury has indicated that the likely next steps would be the release of a position paper and another round of consultation. The timing of this paper and consultation period remains uncertain.

Separately, there have been concerns expressed about the lack of clarity on the tax treatment of deferred annuity style products and how those products would be viewed from the social security/means-testing perspective.

The tax treatment hurdle was largely addressed with the registration of the *Treasury Laws Amendment (2017 Measures No.1) Regulations 2017*, which commenced on 1 July 2017 and confirmed superannuation funds and life insurance companies will receive a tax exemption on income from assets supporting these new income stream products provided they are currently payable or, in the case of deferred products, held for an individual that has reached retirement. Minister O'Dwyer has indicated that her Department is working closely with the Department of Social Security (DSS) on the outstanding social security issues.

ASIC Golden Rules of investing

To coincide with World Investor Week, the ASIC 17-331 Media Release (3 October 2017) reminded investors to work out their financial goals and develop an investment plan before committing to an investment. The release noted ASIC's range of practical tips for all investors including:

- reviewing investment needs and goals to develop the right investment;
- understanding how risky the investment is and deciding how much risk to take on;
- using ASIC's Professional Registers to check if the company or investment scheme is licensed by ASIC;
- finding out how the investment product or company works and how the money will be invested;
- reading the product disclosure statement (PDS) for each investment product to understand the product's features, fees, commissions, benefits and risks; and
- using diversification to spread risk between different asset classes.

The ASIC release highlighted the importance of investors being clear about their goals for investing and encouraged investors to only invest in products they understand.

This media release is a reminder that ASIC is not only a regulator, but has a key role to 'promote confident and informed participation by investors and consumers in the financial system'.

Insurance in Superannuation

Insurance within superannuation continues to be an area of interest for the Government and regulators. This is not surprising given death, TPD and income protection insurance cover is primarily provided through the superannuation system in Australia. Minister O'Dwyer has previously expressed concerns over the appropriateness of cover, erosion of balances due to premiums and the complicated processes in opting out of insurance. More recently the Minister has expressed concerns over profit-sharing arrangements of some superannuation funds with life insurers, and whether the benefits of these arrangements are passed on to members.

The Government has asked the Productivity Commission to examine life insurance in superannuation as part of its review into the efficiency of the superannuation system. The Commission was tasked to examine whether current insurance arrangements are achieving value-for-money for members, and that insurance is not unnecessarily eroding retirement savings. The Commission is due to release its draft report by January 2018.

In response to Government concerns, the Insurance in Superannuation Working Group (ISWG) was formed in November 2016. ISWG contains representatives from funds, insurers, consumer groups and industry bodies tasked with developing a Code of Conduct for life insurance in superannuation. The ISWG released its draft Code of Conduct[2] on 20 September 2017 with the feedback period having closed on 20 October 2017.

2 http://www.aist.asn.au/media/1057095/iswg_consultation_paper_draft_code_of_practice_150917_final.pdf

Key elements of the draft Code of Conduct include:

› Benefit design – ensuring default arrangements are suitable and 'affordable' given the plan's membership.
› Premium caps – trustees required to ensure premiums generally don't exceed 1% of estimated salaries (or 0.5% for members less than 25).
› Cessation arrangements – insurance premiums will cease 13 months after a member's contributions cease (only comes into effect after communicating with members).
› Better data standards and improved transparency arrangement – to help members make informed decisions and to compare insurance offerings, including the provision of standardised Key Fact Sheets.

As you would expect, feedback on the draft Code of Conduct has been varied. The premium caps, in particular seem to be an area of concern for a range of reasons, in part because the prescriptive nature of the rule is potentially in conflict with the trustee's legislative duty to make sure the level of cover is adequate for members.

Commenting on the draft Code Minister O'Dwyer has indicated she is yet to be convinced that the Code provides adequate protection, particularly in relation to getting value for money and 'not having super balances eroded by excessively high fees because of default settings'.

The ISWG is aiming to finalise the Code of Conduct by the end of 2017. There is currently some uncertainty around whether Trustees can agree to be bound by the ISWG Code, given concerns that the Code may be in conflict with trustee obligations under the SIS Act.[3]

Superannuation Complaints Tribunal (SCT) 2016/2017 Annual report

On 16 October 2017, the SCT released its annual report[4] which sets out the number and nature of superannuation related complaints throughout the 2017 financial year. The report notes that of the 2,138 complaints the SCT received 1,376 fell within its jurisdiction. The main categories of complaints are as follows:

› Administration (approximately 50%). The main area of complaint was by far related to the deduction of insurance premiums, followed by complaints relating to various fees and charges.
› Death benefit related complaints (approximately 30%), with most relating to death benefit distribution.
› Disability related complaints (approximately 20%), with most relating to declined claims or benefit amount.

Underpayment of Superannuation Guarantee

Superannuation Guarantee (SG) non-compliance has received significant attention over the last year or so. The ATO estimates the SG gap to be approximately 5%[5] of total SG payments employers were required to pay.

The ATO believes that underpayment of SG is partially due to deliberate non-compliance by employers and partially due to a range of other factors. Some of these other factors include: system design and complexity, current salary sacrifice arrangements, misclassification of workers and industry/workforce characteristics.

Importantly, the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 2) Bill 2017* seeks to close a loophole used by some employers to reduce their employee's superannuation guarantee when the employee chooses to make salary sacrifice contributions to superannuation.

Additionally, on the 29 August 2017 the Government announced that the ATO will be given new powers to provide "near real-time visibility" of SG compliance and enhanced power to recover unpaid SG and enforce compliance. The successful rollout of the 'Single Touch Payroll' and 'Member Account Transaction Service' initiatives from 1 July 2018 are key to the ATO's SG compliance monitoring activities.

Transparency and Member Engagement

RG97 Disclosure

In late 2015, ASIC issued *Regulatory Guide 97 (RG97): Disclosing fees and costs in PDSs and periodic statements*. Under RG97, issuers of most superannuation products and managed investment products issued to retail investors must meet expanded requirements for disclosing fees and costs in Product Disclosure Statements (PDSs) and periodic statements. RG97 requires disclosure of certain transaction and derivative costs incorporated in investment performance and additional look through of fees for interposed vehicles.

3 http://www.aist.asn.au/media/1081465/law_council_of_australia_submission_iswg.pdf
4 http://www.sct.gov.au/latest-news/2016-17-annual-report
5 https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Tax-gap/Superannuation-guarantee-gap/

The transition period for RG97 compliance ended on 30 September 2017. Following the end of the transition period, we saw significant increases in disclosed costs from a number of superannuation funds.

As noted in previous newsletters, there has been significant debate around the interpretation of these requirements and the level of impact on fee disclosures.

Following the end of the transition period, ASIC has written to industry groups advising them of their decision to review the implementation of RG97. ASIC acknowledges that "as a result of stakeholder feedback from across the industry" there are "still some challenges associated with implementation of better fee and cost disclosure".[6]

ASIC has indicated that an external expert will be tasked with conducting a broad review of the fee and cost disclosure regime under RG97, particularly areas that have proved challenging and areas where settled proposals have not yet been developed (e.g. property).

It is anticipated that the expert will produce recommendations in the first half of 2018 through a report that will be publicly released. Following that, ASIC will need to make a decision about the recommendations produced by the expert and then, potentially, make adjustments to RG97. ASIC has reiterated that, while they are extending beyond 30 September 2017 their facilitative compliance approach to fee and cost disclosure, organisations must still make reasonable endeavours to comply in order to avoid penalties. During this period, ASIC's oversight of PDS and periodic statement disclosure will focus on ensuring that consumers are not misled.

Single Touch Payroll

Superannuation contribution reporting

Single Touch Payroll (STP) is an ATO initiative where employers will report salary or wages, pay as you go (PAYG) withholding and (potentially) super information electronically to the ATO directly from their payroll systems, at the same time they pay their employees.

STP was due to be available on a voluntary basis from 1 July 2017 and would be compulsory for all employers with 20 or more employees from 1 July 2018. The ATO's current schedule has some functionality available for a small number of employers from 1 July 2017 with a wider rollout, including additional functionality, to occur later in 2017. Employers can apply for a deferral of STP reporting if their payroll system is not ready by 1 July 2018, or if they have been affected by circumstances outside it's control.

In its 29 August 2017 letter to superannuation trustees, the ATO noted that it would shortly advise industry stakeholders that 'substantial employers[7]' would not be required to report superannuation contribution information from 1 July 2018. The letter noted that the ATO's Member Accounts Transaction Service (MATS), which requires funds to report all contributions it has received to the ATO in 'real time', would be a more a robust way to monitor SG compliance.

MATS essentially replaces the current annual reporting requirement to a new event-based regime, and commences late 2018. The MATS initiative, together with the Member Accounts Attributive Service (MAAS), form a part of the ATO's APRA fund superannuation reporting transformation program.

Employee commencement

The current process for exercising choice of fund is a paper based process through the use of a standard choice form.

In June 2017, the ATO released a consultation paper on online choice of fund design (part of the employee commencement service)[8]. The ATO paper, which focused on employee commencement services rather than payday reporting, sets out:

- background on the scope for new Single Touch Payroll Services supporting the commencement of a new employee (including the provision of pre-filled TFN declaration and choice of superannuation fund online forms).
- an outline of how the proposed draft principles will influence the design of the new choice of fund screens in ATO Online.

The key differences between the existing choice form and the new STP ATO Online form is shown below.

6 http://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-369mr-asic-updates-work-on-fee-transparency-for-super-and-managed-investment-schemes/
7 'Substantial Employers' is determined by the number of employees as at 1 April 2018 and each subsequent year after based on headcount
8 https://s3-ap-southeast-2.amazonaws.com/ehq-production-australia/fa9b7601070a39a22ca78044e5560a84cd104e14/documents/attachments/000/058/008/original/Consultation_Paper_-_Online_Choice_of_Fund_Design.pdf?1498528246

Table 1: Existing choice form comparison with Single Touch Payroll Online form

	Existing choice form	STP employee commencement service (in ATO Online)
Details of member's existing super accounts	Not Provided on standard form provided by the employer to employee. Employee has to locate and add account details and may provide the wrong account identifier.	All existing super accounts for the employee are pre-filled and the member can choose. (SMSF accounts from 2018/19)
Details of employer's default fund	Pre-filled on standard form by the employer or provided separately to the employee as part of commencement process.	Not pre-filled in the current design. Has to be provided by the employer as part of a 'welcome pack' to their new employee.

The proposed design for the ATO online form will only show current superannuation accounts together with balances, insurance and recent contributions. Importantly, the ATO form will not show the new employer's default fund, citing the complexity in capturing this information from the employer. The employee would have to elect a generic employer default option within the ATO form which will notify the employer to create a new default fund account for the employee. If this approach is adopted, employers would have to demonstrate the comparative value of their default fund as a part of their onboarding process.

Where an employer chooses to on-board an employee using their own business management software, the ATO will provide TFN and super choice pre-fill data.

The ATO noted the following in summarising the 29 Submissions to the consultation paper:

- not listing the Default fund on the MyGov screen is a significant concern as it introduces some bias against the default arrangement which may not be in the employee's best interest;
- current design does not allow (or encourage) effective comparison of funds and their benefits. There should also be an option to elect funds not on the employees list (i.e. default fund or any other fund);
- TFN declaration and choice of fund should be separated (to give employees the time to research the various funds).

It is important to note that employers can continue with their paper-based standard choice process, that is, the ATO online process can be voluntarily offered to new employees.

Timeline of events

Timeframe	Event
Financial years beginning on or after 1 July 2016	AASB 1056 (financial reporting for superannuation funds) takes effect
1 July 2017	Imposition of $1.6 million cap on transfers to retirement phase
1 July 2017	Reduction in annual concessional and non-concessional contribution caps to $25,000 and $100,000, respectively
1 July 2017	Reduction in threshold for Division 293 tax to $250,000
1 July 2017	Introduction of additional income tax rules on recipients of certain defined benefit income streams in excess of $100,000 per annum
1 July 2017	Anti-detriment deduction removed for deaths occurring after 30 June 2017
1 July 2017	Remove the requirement that an individual must earn less than 10% of their income to be able to claim a deduction for personal superannuation contributions
1 July 2017	Replace the Low Income Superannuation Contribution (LISC) with the Low Income Superannuation Tax Offset
1 July 2017	Extension of earnings tax exemption to 'innovative' superannuation income streams
1 July 2017	Departing Australia Superannuation Payment (DASP) tax rate increased to 65%
30 September 2017	Updated fee and cost disclosure requirements apply to Product Disclosure Statements (for the majority of providers who have applied for the extended deadline of 30 September 2017)
1 January 2018	Updated fee and cost disclosure requirements to apply to periodic statements
Late 2017	ISWG Code of Practice for insurance in superannuation to be released
30 June 2018	Expiration of ASIC relief period for employer sub-plan disclosure requirements under SIS Act 29QB
1 July 2018	Employers with more than 20 employees required to use Single Touch Payroll enabled software for reporting PAYG withholding amounts to the ATO
1 April 2018*	ATO's Member Accounts Attributive Service (MAAS) commences 1 April 2018 *Member Action Transaction Service (MATS) to commence later 2018
January 2019	ASIC to commence issuing cost recovery invoices in respect of the 2017/2018 year (including some clawback for previous years) to superannuation trustees (as per Report 535 ASIC cost recovery arrangements: 2017-2018)
1 July 2019	Product dashboards to be publicly available for choice products (largest ten investment options only). Product dashboard to be included in periodic statements
31 December 2019	First reporting day for the portfolio holdings disclosure requirements
1 January 2020	Updated fee and cost disclosure requirements apply to periodic statements
1 July 2021	Superannuation Guarantee increases resume (9.5% to 10%)

For more information, please contact your Russell Investments representative:

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