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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.

Turnbull Government re-elected and tax changes remain controversial

With the result of the election now confirmed, the Turnbull Government can move towards implementing the superannuation changes announced in the 2016 Federal Budget. To recap, these changes include:

- Changes to concessional and non-concessional contribution limits
- Lowering the threshold for Division 293 tax
- Capping the transfers to pensions at $1.6m
- Removal of tax exempt status for transition to retirement income streams
- Contributions for low income earners
- Access to tax deductions for concessional contributions
- Removal of anti-detriment payments for death benefits
- Removal of work test for contributions for people under age 75
- Increasing access to low income spouse tax offset
- Extending the tax exemption for retirement products

While response to some of the proposed changes has been positive, two changes which have generated particularly adverse reaction are the lowering of the concessional contribution limits and the introduction of a life-time non-concessional cap of $500,000. While there has been talk about exemptions to the lifetime cap it remains to be seen whether the Government will bow to pressure and modify these proposals.

As always, implementing the proposed changes will create special difficulties for defined benefit funds. The Government has already identified some of these and has consulted with the Actuaries Institute. However it is likely that the full extent of the challenges of implementing the reform measures will not be understood until individual funds start working through the process.

Clearly this latest round of superannuation changes will lead to additional costs for funds and cause uncertainty amongst members. Therefore we were pleased to see that, in his address to the National Press Club on 30 June 2016, Mr Turnbull stated that, if re-elected, there would be no further changes to superannuation in the next term of Government.

Better Retirement Outcomes: Senate Inquiry Economic into Security for Women in Retirement

The Senate Economics References Committee released a report in May entitled *"A husband is not a retirement plan": Achieving economic security for women in retirement."* As we noted in our Q4 2015 Update, there are many factors which influence the adequacy of retirement income for women. The Committee's report is wide ranging – covering issues such as the gender pay gap, workforce participation, financial literacy, housing in retirement, superannuation and the age pension.

The Committee made nineteen recommendations. Generally the recommendations are very high level, and many call for further review or investigation into particular issues. For example, Recommendation 7 is that "the Australian Government investigate further the interaction between means testing of the age pension and mature age workforce participation". However some of the recommendations, particularly in respect of the superannuation system are more specific. The recommendations relating to superannuation and the age pension include;

- The superannuation guarantee should be paid on the Commonwealth Paid Parental Leave Scheme.
- Superannuation tax concessions be re-targeted to ensure they are more equitably distributed and assist people with lower superannuation balances.
- The concessional superannuation contributions of lower income earners not be taxed at a higher rate than their income and the Low Income Superannuation Contribution (LISC) be retained beyond 30 June 2017. (We note that, in the 2016 Budget, the Government announced the LISC will be replaced by the Low Income Superannuation Tax Offset, which will work in a similar way.)
- The increase in the superannuation guarantee rate to 12% be implemented earlier than the current timetable.
- The exemption from paying the superannuation guarantee where salary or wages are less than $450 per month be removed.
- The Sex Discrimination Act 1984 be amended to ensure companies are able to make higher superannuation payments for female employees.
- The Government should abandon its proposal to increase the age pension eligibility age to 70, and commit to maintaining the current method of indexation and benchmarking of the age pension.

Productivity Commission Review of Superannuation System

The Productivity Commission review into the efficiency and competitiveness of the superannuation system is underway. The Commission is to first carry out a study to develop criteria to assess the efficiency and competitiveness of the superannuation system. In developing the criteria, the Commission is to have regard to operational efficiency, allocative efficiency and dynamic efficiency. The Commission will also consider the nature of competition in the superannuation industry, and the effect of government policy on the competitiveness and efficiency of the system. The Commission has received 46 submissions from organisations and individuals[1]. A draft report was released on 2 August 2016 and the date set for completion of the first stage is November 2016.

In Stage 2, the Commission is to conduct a public inquiry to examine alternative models for a formal competitive process for allocating default fund members to products. The report on this stage of the review is due by August 2017.

Both stages 1 and 2 of the review will inform the Commission's inquiry to review the efficiency and competitiveness of the superannuation system following the full implementation of the MySuper reforms (stage 3).

1. http://www.pc.gov.au/inquiries/current/superannuation/competitiveness-efficiency/submissions#initial

Retirement Products

On 3 May 2016, the Government released the final report of its Review of Retirement Income Stream Regulation. The review made seven recommendations, with the first three recommendations relating to the existing minimum drawdown rules. The review concluded that the current rules are satisfactory and, in particular, there is no reason at present to reduce the minimum drawdown requirements. The review also recommended that:

- The Australian Government Actuary should review the annual minimum drawdown rates every five years to ensure they remain appropriate in light of any increase in life expectancy.
- Any other changes to the minimum drawdown amounts should only be considered in the event of significant economic shocks and based on advice of the Australian Government Actuary.

The other four recommendations relate to regulatory barriers to the development of retirement income stream products. The rules and regulations which determine whether the earnings on assets supporting an income stream benefit qualify for a tax exemption are complex, but in effect are designed to ensure that the assets are used up over time in order to provide income over the course of a person's retirement; and prevent large amounts of superannuation savings being passed on as bequests.

The current rules do not allow access to the tax exemption for products such as deferred annuities or pooled arrangements. The 'comprehensive retirement income product for retirement (CIPR)' envisaged by the Financial System Inquiry would depend on the development of these pooled annuity products. To address these barriers the review recommended that:

- An additional set of income stream rules should be developed which would allow lifetime products to qualify for the earnings tax exemption provided they meet a declining capital access schedule.
- The alternative product rules should be designed to accommodate purchase via multiple premiums but additions to existing income stream products should continue to be prohibited.
- SMSFs and small APRA funds should not be eligible to offer products under the new rules.
- A coordinated process should be implemented to streamline administrative dealings with multiple government agencies.

Governance Reforms

The *Superannuation Legislation Amendment (Trustee Governance) Bill 2015* was introduced to the House of Representatives on the 16th September 2015. The Senate Economics Legislation Committee recommended that the Bill be passed by the Senate however four independent Senators stated that they would not support the Bill, putting the legislation on hold. With the prorogation of Parliament on 15 April 2016 and subsequent election, this Bill lapsed. It is unclear whether the Turnbull Government will attempt to reintroduce the legislation in the same form. The changes in the make-up of the Senate at the election would not appear to have made it any easier to have the legislation passed.

The Bill was intended to repeal the current equal representation regime for trustees and requires boards of all APRA-regulated superannuation funds (including stand-alone corporate funds) to have at least one-third independent directors and for the Chair to be one of these independent directors.

The calling of the election also put a hold on the release of the report on the "Fraser Review", the review of not-for-profit fund governance commissioned by Industry Super Australia (ISA) and the Association of Superannuation Trustees of Australia (AIST). It is now uncertain whether the findings of the review will be made public.

Default Superannuation and Choice of Fund

The Government introduced legislation *(the Superannuation Legislation Amendment (Choice of Fund) Bill 2016)* to the House of Representatives on 17 March 2016. The legislation extended choice of fund to employees covered by enterprise agreements and workplace determinations made from 1 July 2016. Employees would continue to be governed by existing enterprise agreement or workplace determination until new agreements or determinations made on or after 1 July 2016 apply.

This legislation lapsed following the prorogation of Parliament and the election.

Objective of Superannuation

On 3 May 2016, the (then) Government announced that it intended to enshrine in law that the objective of superannuation is:

> *To provide income in retirement to substitute or supplement the Age Pension.*

This objective was originally recommended by the Financial System Inquiry and put forward for comment by the Government earlier this year in a discussion paper.

The Government intends to embed the objective of superannuation in a stand-alone Act, with an accountability mechanism to ensure that new superannuation legislation is considered in the context of the objective. The subsidiary objectives will be set out in explanatory material to the Act, and the Government will consult on the final form of the legislation.

This proposed objective prioritises the provision of retirement incomes and precludes the pursuit of other objectives at the expense of retirement incomes. It is intended to move focus away from account balances and towards the provision of retirement income.

We support this focus on retirement income, but note that the proposed objective is not particularly specific. For example, the objective does not indicate what is considered to be an adequate level of income nor the level of tax concessions provided by the superannuation system in support of the objective.

Transparency and Member Engagement

Legislation to refine the Corporations Act 2001 provisions that establishes the legislative frameworks for choice product dashboards and portfolio holdings disclosures was introduced to the House of Representatives on 17 March 2016, but lapsed when Parliament was prorogued. However ASIC has issued several Instruments which clarify the commencement dates for various measures.

ASIC Corporations (Amendment) Instrument 2016/351 defers the commencement of the product dashboard provisions for choice products to 1 July 2017. This Instrument also defers the first reporting day for the portfolio holdings disclosure provisions to 31 December 2017.

The commencement date of the requirement to include product dashboards in periodic statements has been deferred until 1 July 2017 by ASIC Corporations (Amendment) Instrument 2016/364.

ASIC Corporations (Amendment) Instrument 2016/345 defers until 1 July 2017 the disclosure requirements under subsection 29QB(1) of the SIS Act for standard employer-sponsored sub plans. These requirements cover publication on an RSE's website of documents such as product disclosure statements, trust deed and governing rules and actuarial reports.

Timeline of future events	
Timeframe	**Event**
1 July 2016	SuperStream is compulsory for small employers, although the ATO has effectively extended the deadline to 28 October
31 December 2016	Account balance threshold below which small lost member accounts will be required to be transferred to the ATO is increased from $4,000 to $6,000.
1 February 2017	Updated fee and cost disclosure requirements apply to Product Disclosure Statements
No later than 1 July 2017	ADAs transferred to MySuper product
Financial years beginning on or after 1 July 2016	AASB 1056 (financial reporting for superannuation funds) takes effect
1 July 2017	Product dashboards to be publicly available for choice products (largest ten investment options only)
1 July 2017	Removal of the Low Income Superannuation Contribution (LISC)
1 July 2017	Include product dashboard with periodic statements
1 July 2017	Disclosure of RSE documents for employer-sponsored sub-plans
31 December 2017	First reporting day for the portfolio holdings disclosure requirements
1 January 2018	Updated fee and cost disclosure requirements apply to periodic statements
1 July 2018	Employers with more than 20 employees to use Single Touch Payroll enabled software for reporting PAYG withholding amounts and superannuation contributions to ATO
1 July 2021	SG increases resume (9.5% to 10%)

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