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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.

Draft Legislation Supporting Budget Announcements

The Government has released draft legislation with supporting explanatory material to implement the superannuation changes announced in the 2016 Federal Budget. Most of the measures are as announced in the Budget, but there were changes to several measures, in particular:

› The proposed introduction of a $500,000 life-time non-concessional contribution cap has been dropped and replaced with a cap of $100,000 per annum, which will only be available to people with superannuation balances of less than $1.6 million at the previous 30 June. Existing arrangements will remain in place until 30 June 2017, meaning that the opportunity still exists to make a non-concessional contribution of up to $540,000 in the current year (under the three year bring forward rule).

› The work test will remain in place for people aged 65 to 74 who wish to make contributions.

To recap, other changes that were announced and are currently in the process of being legislated include:

› Changes to concessional contribution limits;

› Lowering the threshold for Division 293 tax;

› Capping transfers to pensions at $1.6m (indexed);

› Removal of tax exempt status for income on transition to retirement income streams;

› Introducing the Low Income Superannuation Tax Offset (replacing the Low Income Superannuation Contribution);

› Improving access to concessional contributions;

› Removal of anti-detriment payments for death benefits; and

› Extending the tax exemption for retirement products.

The package of draft legislation also includes amendments to provide commensurate treatment for defined benefit and constitutionally protected funds, and some minor amendments to improve the superannuation administration arrangements. These latter amendments simplify and consolidate the range of existing processes for the release of amounts from individuals' superannuation using a release authority. Where the release of an amount is voluntary (for example the release of excess concessional contributions), individuals will have 60 days to request that the Commissioner arrange the release of the specified amount. Where the release is mandatory (for example, the release of excess non-concessional contributions tax), the individual will not be involved in releasing amounts and instead the Commissioner will deal with funds directly.

In relation to the amendments which will allow individuals to deduct personal superannuation contributions irrespective of the level of their employment income, the Government has recognised that some defined benefit funds may incur significant costs in restructuring rules and benefit calculations to cater for the new provisions. Therefore defined benefit funds will be able to request to be included in a category of funds which is exempt.

The Government has set an ambitious timetable for the introduction of the changes, with most new measures to take effect from 1 July 2017. However, there is concern within the superannuation industry that it will be difficult to have systems updated and ready to handle the changes by 30 June next year.

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Objective of Superannuation

As part of the first tranche of draft legislation to give effect to the 2016-17 Budget proposals, the Government set out legislation to enshrine in law that:

The primary objective of the superannuation system is to provide income in retirement to substitute or supplement the Age Pension.

A statement of compatibility with the primary objective of the superannuation system will be required for Bills and regulations relating to superannuation.

The Government has identified five subsidiary objectives to support the primary objective of the superannuation system. The subsidiary objectives provide a framework for assessing the compatibility of a Bill or regulation with the primary objective of the superannuation system. These subsidiary objectives are to:

› facilitate consumption smoothing over the course of an individual's life;
› manage risks in retirement;
› be invested in the best interests of superannuation fund members;
› alleviate fiscal pressures on Government from the retirement income system; and
› be simple, efficient and provide safeguards.

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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.

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. An Issues Paper titled "Superannuation: Alternative Default Models" was released in September 2016 to facilitate discussion.

The Commission explains that the emphasis of the inquiry is on developing alternative models, not on reviewing the MySuper or other current default arrangements. The Commission will therefore start from an objective baseline scenario of no defaults. Alternative models will be assessed against this baseline and their relative performance against five criteria:

› **members' best interests:** meeting the best interests of members, by maximising long-term net returns and allocating members to products that meet their needs.
› **competition:** fostering competition between funds that drives innovation and cost reductions, facilitates new entrants to the market and leads to efficient long-term outcomes.
› **integrity:** minimising scope for the allocation process to be manipulated.
› **stability:** supporting a stable superannuation system, including by building trust and confidence in funds regulated by APRA.
› **system-wide costs:** minimising the total costs to members, employers and funds.

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The Commission's paper sets out two alternative allocation models to the 'no default' model: an administrative (or filter) model and a market-based (tender or auction) model. Under the administrative model, a government body would use a regulatory mechanism (the 'filter') to prescribe minimum standards that products must meet to be eligible to be used as defaults. Clearly the more demanding the filter is made, the fewer funds will qualify as defaults and the regulations could be set to arrive at the desired number of default funds.

A tender, or auction, model would involve funds submitting bids to a government body, which would then assess those bids and select the best products. These products would remain eligible to receive default contributions for a set period of time, provided that funds continue to meet the commitments they made in their bids.

The simplest approach to assessing the tenders would be to base comparisons only on the fees quoted, however this overlooks other factors such as levels of member service, investment strategies and returns and governance.

The process of comparing different funds becomes more difficult when there are various qualitative and quantitative metrics to be weighed up. Of course, this is a model which has been used in the corporate superannuation sphere for many years, but that isn't on the same scale as a country wide default system or in the context of an auction.

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).

Single Touch Payroll System

The *Budget* Savings *(Omnibus) Bill 2016*, which received Royal Assent on 16 September 2016, includes the Government's single touch payroll (STP) reforms for reporting of payroll and superannuation information to the Australian Taxation Office (ATO).

Under the reforms, from 1 July 2018 employers with 20 or more employees must automatically provide payroll and superannuation contribution information to the ATO when payments are made. Employers will be able to adopt STP before that date on a voluntary basis.

STP reporting is designed to reduce the compliance costs for employers meeting their pay as you go (PAYG) withholding obligations by using Standard Business Reporting (SBR) enabled software to automatically report employee salary or wage information to the Commissioner at the time these amounts are paid.

STP reporting will also provide for employee-level superannuation contribution information to be given to the ATO in a more timely and visible manner. This will improve the ATO's ability to monitor the payment of employee entitlements and enable the ATO to implement early intervention processes if superannuation guarantee (SG) contributions are not being paid.

The Bill also streamlines payroll and superannuation choice processes, allowing employers to give employees the option to complete their tax file number declaration and standard choice form through an ATO online service. The online process will be voluntary for employers and employees, and will apply from 1 January 2017.

The ATO is currently working with industry stakeholders to develop the detail to support the STP framework.

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Payroll Tax – Exempt Superannuation Contributions and Pre 1 July 1996 Service

The NSW Office of State Revenue (OSR) has issued Revenue Ruling No. PTA 040 (Payroll Tax – Exempt superannuation contributions pre 1 July 1996 services). On 30 June 2015, White J handed down his decision in *Qantas Airways Limited v Chief Comr of State Revenue* [2015] NSWSC 826. The Revenue Ruling covers the legislative background to the decision and clarifies how the Chief Commissioner will apply the exemption for defined superannuation benefits in respect of services rendered or performed by an employee before 1 July 1996 in light of that decision. The Ruling is taken to have applied from 1 July 2007.

In broad terms, the Ruling allows for payroll tax relief on employer superannuation contributions that relate to pre 1 July 1996 defined benefit liabilities if:

› A fund is in a deficit position at the start of a year and the employer's contribution is in excess of the "normal cost"; or

› A fund is in a surplus position at the start of a year and the employer's contribution is in excess of the "adjusted normal cost".

The Ruling explains how the normal cost and the adjusted normal cost are to be determined, and sets out how the apportionment of contributions between liable and exempt contributions is to be determined.

Retirement Products

The Government has previously stated it will support the development of comprehensive income products for retirement – otherwise known as CIPRs – by removing barriers to innovation in retirement income stream products.

The Government intends to facilitate superannuation trustees pre-selecting these products for members to help guide members at retirement. However, people will not be forced to use these products – they will simply provide an additional option for managing finances in retirement.

The Minister for Revenue and Financial Services, Ms Kelly O'Dwyer, announced that a discussion paper on the implementation of CIPRs will be released in coming months.

As mentioned earlier in this Update, the superannuation reforms remove the earnings tax exemption in respect of transition to retirement pensions. To prepare for this change, superannuation funds will need to ensure that their systems and processes can deal with this changed tax treatment.

The draft legislation tax package also contains provisions to extend the tax exemption on earnings to include assets supporting deferred income streams. The exemption will apply during the period of deferral, provided the individual has satisfied a condition of release.

Transparency and Member Engagement

In late 2015, ASIC issued Regulatory Guide 97 (RG 97): Disclosing fees and costs in PDSs and periodic statements. Under RG 97, 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. RG 97 requires disclosure of certain transaction and derivative costs incorporated in investment performance.

The date by which the requirements must be met for PDSs, 1 February 2017, is fast approaching and there is still confusion within the superannuation industry over which fees need to be disclosed. At the end of the September quarter the industry was still working on drafting guidance on implementing RG 97 to try to achieve some consistency in approach.

ASIC has acknowledged this confusion and admitted that there may be variations, in the short term, in the information that funds disclose and that ASIC will take a facilitative approach to compliance in the first few months after the start date.

The new disclosure standards will flow through to periodic statements for statements given to members from 1 January 2018.

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Commonwealth Bank Officers Superannuation Corporation Pty Ltd & Anor v Beck & Anor

The NSW Court of Appeal has allowed an appeal by the trustee of a superannuation fund after finding that an amendment to the fund's trust deed removing discretionary retirement benefits did not breach the SIS legislation.

In the first instance, the Court found that amendment was invalid and contravened section 52(2) of the Superannuation Industry (Supervision) Act 1993 which requires trustees to act in the best interests of members, as well as Regulation 13.16 of the Superannuation Industry (Supervision) Regulations 1994, which prevents any amendment of a regulated superannuation fund that adversely alters a beneficiary's right or claim to accrued benefits and the amount of those accrued benefits.

On appeal, the Court found that the benefit claimed by the member, and removed by the amendments, was discretionary, and thus, the member did not have a right to the benefit. Furthermore, he had not retired before the age of 55 at the time the provision was removed. As such, neither the right to be considered nor the pension entitlement itself had accrued. The Court concluded that the amendment was valid and that superannuation law had not been contravened.

We note that some elements of the base are quite unique, so it may not necessarily be the case that the judgment can be applied more broadly.

Timeline of future events

Timeframe	Event
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), to be replaced by the Low Income Superannuation Tax Offset
1 July 2017	Include product dashboard with periodic statement
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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