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May 2018 | Pensions & Superannuation Regulatory Update

May 2018 In Brief

*Winter has arrived in Australia, and the regulatory change thermostat was raised a couple of degrees during May. The **Commonwealth Budget** was released, containing several significant policies impacting pension and superannuation funds.*

*The **Productivity Commission** released a draft of its report into efficiency and competitiveness in the superannuation system, making recommendations for major reforms to MySuper and employer default arrangements.*

*APRA commenced a **review of the prudential framework**, which also releasing findings of thematic reviews into governance and outsourcing to related parties.*

*We also saw legislative progress with the **CIPR** related **SIS Retirement Income Covenant,** confirmation of the **Consumer Data Right** and **Open Banking** policy and a swathe of important technical developments.*

Major Reform Updates

SIS Retirement Income Covenant

17 May 2018

Announcement & consultation

Link to Details

A retirement income covenant is planned to be introduced in the *Superannuation Industry (Supervision) Act 1993* as a first stage of the government's development of a retirement income framework.

The covenant will require trustees to develop a retirement income strategy for their members. It will codify the requirements and obligations for superannuation trustees to consider the retirement income needs of their members, expanding individuals' choice of retirement income products and improving standards of living in retirement.

There will also be supporting regulations that oblige trustees to offer their members a comprehensive income product for retirement (CIPR) and to guide and support members to select the right retirement solution.

A position paper has been released by Treasury, outlining the principles the government proposes to implement in the covenant and supporting regulatory structures.

QMV recommends that trustees of superannuation funds inform themselves of the nature and impact of the proposed changes, and raise any issues during the consultation period.

Superannuation Guarantee Enforcement Amnesty

24 May 2018

Bill introduced

Link to Details

A Bill introducing a one-off 12-month amnesty for historical underpayment of superannuation guarantee (SG) and measures to streamline the SG system has been introduced into parliament.

The *Treasury Laws Amendment (2018 Superannuation Measures No 1) Bill 2018* provides for a one-off 12-month amnesty to encourage employers to self-correct historical SG non-compliance.

In general terms, to qualify for the amnesty an employer must disclose to the Commissioner information related to an SG shortfall for a quarter that ends at least 28 days before the start of the 12-month amnesty period. The measure will apply from 24 May 2018.

QMV recommends that superannuation trustees ensure that representatives involved in liaising with employers are aware of the changes to respond to any queries. There may also be additional employer contributions which relate to prior periods.

Superannuation and victims of crime compensation

28 May 2018

Consultation

Link to Details

Treasury has released two draft proposals that would provide victims of crime with access to a perpetrator's superannuation in certain circumstances:

- a claw-back mechanism for "out of character" superannuation contributions made by criminals to shield their assets from use in compensating victims of their crimes; and
- to allow victims of serious, violent crimes to be able to access a perpetrator's superannuation as compensation, where other assets have been exhausted, subject to appropriate limits and thresholds.

Treasury is seeking views views on the likely effectiveness of the draft proposals, including their interaction with existing state and territory criminal and civil procedures.

QMV recommends that superannuation trustees complete an assessment of the impact of these changes on operations and systems, engaging with relevant service providers and business units concerning prospective implementation.

Financial Complaint & Dispute Resolution

31 May 2018

Legislative instrument issued

Link to Details

ASIC has issued *Corporations (AFCA Transition) Instrument* 2018/447, and announced it will give superannuation trustees transitional relief until 1 July 2019 to allow them time to update mandatory disclosure documents and periodic statements with the contact details of the Australian Financial Complaints Authority (AFCA).

AFCA is the new single external dispute resolution (EDR) scheme for consumer and small business complaints. A range of measures has been put in place to ensure that consumers are kept informed of how and where to pursue a complaint during the transition to AFCA, which will start dealing with complaints about all financial firms from 1 November 2018.

QMV recommends that superannuation trustees note the additional time granted to amend disclosure documents, however highlights to need to implement changes associated with the transition to the new complaints and dispute resolution regime over the coming months.

Technical Changes & Updates

Compassionate Grounds Release

30 May 2018

Regulations made

Link to Details

The *Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations 2018* have been made. The regulations improve the integrity of the processes under which benefits are released on compassionate grounds and complement the changes made by the *Treasury Laws Amendment (2018 Measures No 1) Act 2018* to transfer the administrative responsibility for the early release of benefits on compassionate grounds from the Chief Executive Medicare to the Commissioner of Taxation.

The regulations streamline and improve the integrity of the release process by providing that the Commissioner must give a copy of its written determination to both the member who applied and the trustee of the superannuation entity.

QMV recommends that superannuation trustees and administrators note the change, and adapt administrative processes to accommodate notices to be received from the Commissioner of Taxation rather than Medicare.

Inadvertent concessional caps breaches

9 May 2018

Legislation introduced and ATO website updated

Link to Details

The *Treasury Laws Amendment (2018 Superannuation Measures No 1) Bill 2018* amends the *Superannuation Guarantee (Administration) Act 1992* to allow individuals to avoid unintentionally breaching their concessional contributions cap when they receive superannuation contributions from multiple employers.

The amendments allow certain individuals with multiple employers to apply to the Commissioner for an employer shortfall exemption certificate which prevents an employer from having an SG shortfall in relation to the employee. The measure will apply from 1 July 2018.

QMV suggests that superannuation trustees may wish to consider the impact of these changes on the compliance assurance processes in administration systems.

Financial Institution Supervisory Levies

11 May 2018

Consultation

Link to Details

Treasury has released for consultation a discussion paper, prepared in conjunction with the Australian Prudential Regulation Authority (APRA), seeking submissions on the proposed financial institutions supervisory levies that will apply for the 2018/19 financial year.

The financial industry levies are set to recover the operational costs of APRA and other specific costs incurred by certain Commonwealth agencies and departments, including the Australian Securities and Investments Commission, the ATO, and the Australian Competition and Consumer Commission.

QMV recommends that superannuation fund trustees review the proposed levy, and assess the impact on the fund's budgeting for future expenditure.

Small Superannuation Account Regulations

14 April 2018

Legislative Instrument Issued

Link to Details

The *Small Superannuation Accounts Regulations 2002* was scheduled for automatic repeal on 1 October 2019. The *Small Superannuation Accounts Regulations 2018* (the Regulations) remake and improve the *Small Superannuation Accounts Regulations 2002* and ensure continuation.

The Act established the Superannuation Holding Accounts Reserve (SHAR). Employers could make superannuation contributions into a SHAR account for employees if they were unable to find a fund willing to accept the contribution. Where there is a relationship breakdown, a SHAR account may be split in accordance with the *Family Law Act 1975*.

The purpose of the *Small Superannuation Accounts Regulations 2002* was to prescribe the balance of the new account that was opened to facilitate a split of the SHAR account between former spouses. The Regulations remake and improve the *Small Superannuation Accounts Regulations 2002* by simplifying the definitions and adopting current drafting practices, however do not substantively affect the meaning or operation.

QMV recommends that superannuation providers note the changes, however the impact is minimal with no substantive impact.

Non-arm's Length Income

24 May 2018

Bill introduced

Link to Details

The *Treasury Laws Amendment (2018 Superannuation Measures No 1) Bill 2018* has been introduced to Parliament and contains measures ensuring that the non-arm's length income rules for superannuation entities apply in situations where a superannuation entity incurs non-arm's length expenses in gaining or producing the income.

The Bill clarifies the operation of subdivision 295-H of the *Income Tax Assessment Act 1997* to ensure that complying superannuation entities cannot circumvent the non-arm's length income rules by entering into schemes involving non-arm's length.

The framework for the new non-arm's length income rules remains broadly the same. Expenses may be of a revenue or capital nature, in the same way that non-arm's length income may be statutory or ordinary income.

QMV recommends that superannuation fund trustees note the change in law, and ensure that all income received is compliant with the non-arm's length income rules.

Family Law Interest Rate

25 May 2018

Bill introduced

Link to Details

The *Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2018*, made under the *Family Law (Superannuation) Regulations 2001*, provides the interest rate for adjusting entitlements under certain orders or agreements made under the *Family Law Act 1975* and for splitting future superannuation benefits for the adjustment period that is Financial Year 2018/19.

The Determination also provides the method by which the interest rate is calculated for that purpose for an adjustment period that includes a period within that financial year.

QMV recommends that superannuation trustees and administrator note the change, and ensure that administrative systems and procedures are amended to reflect the revised interest rate and calculation method.

Policy & Guidance

Consumer Data Right & Open Banking

9 May 2018

Government Response to Review

Link to Details

Government has agreed to the recommendations of the Review, both for the framework of the overarching Consumer Data Right and for the application of the right to Open Banking, with a phased implementation from July 2019.

The Government will phase in Open Banking with all major banks making data available on credit and debit card, deposit and transaction accounts by 1 July 2019 and mortgages by 1 February 2020.

Data on all products recommended by the Review will be available by 1 July 2020. All remaining banks will be required to implement Open Banking with a 12-month delay on timelines compared to the major banks.

Treasury will be consulting on draft legislation, the ACCC will be consulting on draft rules, and Data61 will be consulting on technical standards over the coming months.

QMV recommends that superannuation trustees consider how open banking may present strategic opportunities to improve member service, while considering the likely prospect of the Consumer Data Right extending to Open Super and Open Pensions in the future.

Efficiency & Competitiveness in the Superannuation System

29 May 2018

Draft report released

Link to Details

The Productivity Commission has released its draft report for the inquiry into the efficiency and competitiveness of Australia's superannuation system. The report includes draft recommendations aimed at modernising the superannuation system, including:

- defaulting only once for new workforce entrants and a single shortlist of up to 10 superannuation products presented to all members who are new to the workforce
- requiring trustee boards of all APRA-regulated superannuation funds to disclose to APRA when they enter a memorandum of understanding with another fund in relation to a merger attempt
- MySuper regulations limiting exit and switching fees to cost recovery levels to all new members and new accumulation and retirement products
- requiring superannuation funds to clearly inform, on an annual basis, all members who are subject to trailing financial adviser commissions
- opt in insurance for members under 25
- requiring trustees to cease all insurance cover on accounts where no contributions have been obtained for the past 13 months
- adoption of the *Insurance in Superannuation Voluntary Code of Practice* as a mandatory requirement to obtain or retain MySuper authorisation

The final report will be prepared after further submissions have been received and public hearings have been held, and will be forwarded to the Australian Government at a date to be advised.

The draft recommendations have the potential of major impact on the strategic business model and operations of superannuation funds. All superannuation trustees should review the draft report in full, and make submissions either directly or via industry associations. Strategic planning should contemplate the possibility of the recommendations being adopted.

Financial Advice Code of Ethics Compliance Shemes

15 May 2018

Consultation Announced

Link to Details

ASIC has released a consultation paper outlining its proposed approach to approving and overseeing compliance schemes for financial advisers.

Incoming training and education requirements for financial advisers include obligations to comply with a code of ethics that is being developed by the Financial Adviser Standards and Ethics Authority (FASEA).

QMV recommends that all superannuation entities providing financial advice under an AFS Licence become familiar with the Financial Advice Code of Ethics, and ensure that robust compliance mechanisms are implemented and maintained.

Operational Due Diligence Guidance

16 May 2018

Consultation Announced

Link to Details

The Financial Services Council (FSC) and the Australian Institute of Superannuation Trustees (AIST) have today released further guidance tools to help fund managers prepare their operational due diligence (ODD) reports for the superannuation industry.

The FSC has released a questionnaire designed to allow fund managers to respond more easily to super funds' routine due diligence requests, which are carried out before investment managers' services are enlisted. This standardised template covers the provision of information to third parties, be they external ODD assessors or superannuation fund clients conducting their own due diligence.

A frequently asked questions (FAQ) document has also been released by the AIST to help fund managers understand what information they are expected to provide to super funds and to answer questions about how this will be included in the super funds' due diligence reports. The questionnaire and the FAQ follow the publication by AIST of an Operational Due Diligence Guidance Note on its website.

QMV recommends that any superannuation entity completing their own ODD on investment managers become familiar with the revised guidance and tools.

APRA Thematic Review of Governance

16 May 2018

Letter to RSEs

Link to Details

The Australian Prudential Regulation Authority (APRA) has released a letter to superannuation trustees after completing a thematic review into governance. APRA is urging RSE licensees to examine whether their board has the optimum mix of skills, capabilities and experience needed to effectively carry out its responsibilities.

APRA has specifically identified the following areas and expects RSE licensees to complete a review into these areas:

- extending fit and proper assessments to consider the composition of the board as a whole
- Uplifting policies and directives concerning ensuring the right set of skills
- Moving beyond self-assessment of Board performance

QMV recommends that RSE licensee complete a review of governance arrangements considering APRA's findings.

APRA Thematic Review of Related Party Arrangements

29 May 2018

Letter to RSEs

Link to Details

APRA has released the findings of its recent thematic review of related party arrangements for registrable superannuation entity (RSE) licensees, calling for greater focus by superannuation licensees on administering outsourcing arrangements with related parties to effectively manage conflicts of interest.

APRA has written to all RSE licensees to outline its observations and recommendations from the review, which it says are relevant for all RSE licensees to consider with a view to ensuring their related party arrangements are in the best interests of members and contributing to the delivery of sound member outcomes.

QMV recommends that RSE licensees complete a review of existing outsourcing policy and practices to ensure that practices remain consistent with APRA recommendations and remain appropriate in ensuring that member best interests and sound outcomes are advanced.

APRA Prudential Framework Post Implementation Review

24 May 2018

Consultation Announced

Link to Details

APRA announced that it is undertaking a comprehensive post-implementation review of the superannuation prudential framework introduced in 2013, following the review into the governance, efficiency, structure and operation of Australia's superannuation system. To commence this review, APRA has released the first of a series of consultation papers on aspects of the prudential framework, including:

- an overarching discussion paper, and
- two short topic papers on governance and risk management.

APRA will release over the next few months short consultation papers covering the other four topic areas addressed in the prudential framework: financial requirements, operational risk and outsourcing; investments; insurance; and member flows and products.

Written submissions on all consultation papers are due by 26 September 2018. A final report is expected to be released by early 2019.

QMV recommends that superannuation trustees participate in the consultation process, and a means of ensuring that prudential regulation strikes the right balance with the core business goals of providing for member retirement.

Defined benefit contribution deductibility election

14 May 2018

Announcement

Link to Details

The ATO has advised super funds which provide defined benefit interests to elect, or revoke their election, before 1 July 2018 to treat member contributions as non-deductible from 2018/19. A fund that provides defined benefit interests must notify the ATO of their election before 1 July 2018 if they want to either:

- elect to be a non-deductible fund for the first time from 2018/19
- elect to treat member contributions made to the defined benefit interests within the fund as non-deductible for the first time from 2018/19, or
- revoke their previous election to be non-deductible, in order to accept deductible contributions from 2018/19.

QMV recommends that superannuation funds offering defined benefit products ensure that an election is made.

Draft ruling on contributing proceeds of downsizing to superannuation

24 May 2018

Draft tax ruling

Link to Details

The ATO has released a draft ruling providing guidance on the measure which allows people aged 65 and older to make a non-concessional (post-tax) superannuation contribution of up to $300,000 from the proceeds of selling their home. The draft ruling discusses these contributions and how the measure interacts with other income tax and superannuation concepts, specifically addressing:

- contribution caps
- fund acceptance rules, and
- capital gains tax (CGT).

QMV recommends that superannuation trustees and administrators assess the draft ruling to ensure that administrative systems and processes are configured in a manner consistent with the draft guidance.

Draft ruling on first home super saver scheme

24 May 2018

Draft tax ruling

Link to Details

The ATO has released a draft ruling providing guidance on the operation of the First Home Super Saver Scheme (FHSS Scheme). The draft ruling clarifies that a contribution must be an “eligible contribution” in order for it to be released under the FHSS Scheme. An eligible contribution is a contribution made in respect of an individual in a financial year and must be a concessional or non-concessional contribution that is either:

- an employer contribution that is not a mandated employer contribution (within the meaning of Pt 5 of the *Superannuation Industry (Supervision) Regulations 1994*), or
- a member contribution that is made by an individual.

QMV recommends that superannuation trustees and administrators assess the draft ruling to ensure that administrative systems and processes are configured in a manner consistent with the draft guidance.

Superannuation fund investment in Agriculture

24 May 2018

Parliamentary inquiry

Link to Details

The Commonwealth House Standing Committee on Agriculture and Water Resources commenced an inquiry into the barriers to increased investment in Australia's agriculture sector by superannuation funds, and called for submissions.

According to the Committee's Chair, Rick Wilson MP, the Australian agricultural sector is in danger of being left behind because of a lack of investment: "The agricultural sector in Australia needs much more investment if it wants to remain competitive, and the superannuation industry is an obvious source of that. With this inquiry, the Committee hopes to find out how investment can be encouraged".

QMV recommends that superannuation funds consider making a submission to the inquiry.

Propogation Arrangements Guidance

30 May 2018

Guidance Issued

Link to Details

The ATO has issued *CGT Determination* TD 33, *Taxation Ruling* TR 96/4 and *Taxation Ruling* TR 96/7 and *Practical Compliance Guideline* PCG 2018/2 on its compliance approach to the use of propagation arrangements used by registrable superannuation entities (RSEs) when selecting assets for disposal. It applies from 1 July 2018 and clarifies the ATO's approach to these types of arrangements for the large superannuation industry.

The guideline applies to registrable superannuation entities that contract with custodians to provide custodial and investment administration services for the RSE's assets.

Propagation is a term adopted by custodians to describe a tax parcel selection process. Under propagation, the tax parcel selection methodology agreed with the RSE is applied across the RSE's asset class level holdings instead of being confined to the individual fund manager level. When assets are disposed of, the relevant parcel is selected from the propagated portfolio for each transaction based on the parcel selection methodology agreed with the RSE.

QMV recommends that superannuation trustees review arrangements with custodians to ensure that agreements and practices are conducted consistently with the ATO guidance and ruling.

More Questions or Need Support?

QMV partners with superannuation fund trustees and administrators to adapt to changes in the legal and regulatory environment.

If you have any questions or need assistance, you can contact me directly at jsteffanoni@qmvsolutions.com

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