What’s News?

PDF FORMAT

Latest News

ASIC concerned about AFS Group’s financial advice
Australia’s financial services sector has an opportunity to use the federal government’s advice and superannuation reforms to rebuild investor confidence in the industry, the Assistant Treasurer said. On November 2, the federal government introduced legislation into the House of Representatives to increase the superannuation guarantee from 9 per cent to 12 per cent (11 November 2011)    More…

Intra-fund financial advice a threat to corporate superannuation
The Corporate Super Specialist Alliance (CSSA) is concerned that when the third tranche of Future of Financial Advice (FOFA) reforms is released, intra-fund advice provisions will lead to a blurring between financial advice and administration costs (10 November 2011)    More…

Financial advice set-up a hurdle for superannuation funds
Superannuation funds will need to invest in a significant amount of infrastructure before they are ready to launch a financial advice service to their members, according to industry experts at the Association of Super Funds of Australia conference (10 November 2011)    More…

Former SAI director pleads guilty - Investor losses in excess of $12m
The former director of Strategic Alternative Investments (SAI) has pleaded guilty to six charges of dishonest and deceptive conduct. SAI was the holder of an Australian financial services licence and provided product advice and dealt in derivative and foreign exchange contracts (10 November 2011)    More…

Devil in the detail of FOFA legislation
The Federal Government has injected enough complexity and uncertainty into its Future of Financial Advice legislation that it may not be possible for the industry to implement it by 1 July next year, in the immediate aftermath of the first tranche of the legislation introduced to the House of Representatives (10 November 2011)    More…

Retirement planning made easier with new online tools
Located on the Government’s consumer finance website, MoneySmart.gov.au and developed by the Australian Securities and Investments Commission (ASIC), the new online tool can provide an estimate of your income in each year of your retirement, and provide practical tips on how to boost your superannuation savings (09 November 2011)    More…

Proposed Self-Managed Superannuation Fund Auditor Rules are unnecessarily complicated, SPAA says
Proposed amendments defining the period in which the auditor of a self-managed superannuation fund (SMSF) must provide an audit report to SMSF trustees is “unnecessarily complicated,” according the Self-Managed Super Fund Professionals’ Association of Australia (SPAA) (09 November 2011)    More…

First National Threat Assessment on money laundering threats and responses released
Minister for Home Affairs and Justice Brendan O’Connor has launched AUSTRAC’s first National Threat Assessment (NTA) on money laundering, outlining the threats to business and government from transnational crime. Money laundering is not only a major threat to our financial systems but also one of law enforcement’s best opportunities to detect and disrupt organised crime (08 November 2011)    More…

Super cash flow positive: ASFA, APRA
The cash flow of Australian superannuation funds is positive and expected continue for the foreseeable future, according to a number of industry organisations. This is supported by APRA’s research into investment in illiquid assets by large APRA-regulated superannuation funds, it is clear funds are managing their liquidity risk (08 November 2011)    More…

ASIC bans authorised representative of Romad Financial Services
ASIC’s clean-up of the financial services industry is continuing with the banning of a Melbourne-based authorised representative of Romad Financial Services for four years after he failed to comply with financial services laws. ASIC said his banning is part of commission’s intent to improve industry standards and protect the investing public from individuals who operate outside financial services laws (08 November 2011)    More…

APRA releases research on illiquid investments of super funds
APRA has released the results of research into investment in illiquid assets by large APRA-regulated superannuation funds. Illiquid assets include directly held property, unlisted property trusts, infrastructure investments, private equity and hedge funds (07 November 2011)    More…

Treasurys clarifies super, advice reforms
Treasury has revealed further details of the federal government’s low-cost superannuation product, MySuper, and industry advice reforms at a meeting with stakeholders and issued a further discussion paper on the FOFA best interest duty (07 November 2011)    More…

ASIC obtains interim orders against Equititrust
The Australian Securities and Investments Commission (ASIC) has placed a number of interim orders against Equititrust Limited restraining the operations of two of its managed investment schemes (MIS). The regulatory body is also concerned that Equititrust is in breach of the Corporations Act 2001 requiring that it lodge audited financial reports and compliance plans for EIF and EPCIF. (03 November 2011) More...

Banned licensees rise by 56 per cent: ASIC
FPA professionalism chief says the ASIC's emphasis on licence withdrawals is misrepresentative. The number of banned licensees has risen by 56 per cent in the past 12 months, ASIC's annual report for 2010 to 2011 has found. The percentage equates to a total of 64 licence withdrawals for the period (31 October 2011) More...

Risk and return of illiquid investments: A trade-off for superannuation funds offering transferable accounts
Australian Prudential Regulation Authority (APRA)
The research focuses on 146 large superannuation funds with total assets of at least $200 million. These funds represent about three-quarters of the assets in APRA-regulated superannuation funds. (07 November 2011) More…

First Money Laundering Threat Assessment
Australian Transaction Reports and Analysis Centre (AUSTRAC)
The report canvasses indicators and activities involved, the sectors and professions that are vulnerable, a range of new and emerging threats and the general framework within which business and government operate to identify and prevent this crime (08 November 2011)
Money laundering in Australia 2011 (undated)

Practice Notes

Increase in superannuation guarantee charge
The Government has introduced the Superannuation Guarantee (Administration) Amendment Bill 2011 into the House of Representatives. If passed, the bill will increase the Superannuation Guarantee Charge from 9 per cent to 12 per cent of an employee’s ordinary time earnings and the Superannuation Guarantee age limit will be abolished. On 1 July 2019 the rate will be set at 12 per cent for 2019-20 and subsequent income years (October 2011) More…

ASIC: new tools to plan for retirement
ASIC has launched a new retirement planning publication and online calculator for people planning their retirement finances. Financial Decisions at Retirement provides case studies, explanations of different super income options and unbiased, simple facts View, download or order copies of Financial Decisions at Retirement (new window)
To use the Retirement Planner, also visit www.moneysmart.gov.au (new window) (09 November 2011) ASIC's new tools to plan for retirement

APRA: discussion paper on covered bonds and securitisation
The discussion paper, Covered bonds and securitisation matters, and the draft prudential standard reflect the Government’s recent amendments to the Banking Act 1959 to allow ADIs to issue covered bonds. Submissions on the covered bond and securitisation proposals are due by 9 December 2011 and should be sent to coveredbonds@apra.gov.au. The discussion paper and draft APS 121 can be found on the APRA website at: www.apra.gov.au/adi/Pages/Covered-bonds-and-securitisation-matters-Nov-2011.aspx (08 November 2011)

ASIC: New financial requirements for responsible entities
ASIC has released new financial requirements for responsible entities (REs) of managed investment schemes in Class Order (CO 11/1140) and updated versions of Regulatory Guide 166 Licensing: Financial requirements (RG 166) and Pro Forma 209 Australian financial services licence conditions (PF 209). REs must prepare 12-month cash-flow projections which must be approved at least quarterly by directors (07 November 2011) More…

New Superannuation Legislation Amendment (MySuper Core Provisions) Bill
If passed the Bill will implement key aspects of the Stronger Super reforms relating to MySuper. The provisions amending the Superannuation Industry Supervision Act 1993 commence on 1 January 2013 or an earlier day fixed by Proclamation. The provision amending the Superannuation Guarantee (Administration) Act 1992 commences on 1 October 2013, from which date employers must make contributions for employees that do not have a chosen fund to a fund that offers a MySuper product Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011 (05 November 2011)

Legislation

Commonwealth

Bills

Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011
A Bill for an Act to amend the law relating to superannuation, and for related purposes (07 November 2011) More…

Superannuation Guarantee (Administration) Amendment Bill 2011
Changes to the superannuation guarantee Schedule 1 to this Bill amends the Superannuation Guarantee (Administration) Act 1992 to increase the age of an employee at which the superannuation guarantee (SG) no longer needs to be provided from 70 to 75, and to gradually increase the SG charge percentage from 9 per cent to 12 per cent (04 November 2011) More…

Corporations Amendment (Future of Financial Advice) Bill 2011
A Bill for an Act to amend the law in relation to financial advice, and for related purposes - best interests obligations and remuneration, client charges and fees (31 November 2011) More…

Progress of Legislation

Corporations Legislation Amendment Regulations 2011 (No. 1) (SLJ 193/2011)
These Regulations commence on 31 October 2011.

Commence on 01 November 2011 - Schedule 1 - A single day to be fixed by Proclamation -
Cases

Jones v Superannuation Complaints Tribunal [2011] FCA 1255

ADMINISTRATIVE LAW — application for declaration and writ of mandamus in relation to decision of Superannuation Complaints Tribunal that it did not have jurisdiction to hear the applicant’s complaint pursuant to s 14 of the Superannuation (Resolution of Complaints) Act 1993 (Cth) (‘SRC Act’) because the applicant’s complaint had not been made within the prescribed period — where parties accepted that whether complaint was made in prescribed period was jurisdictional fact which Court determines for itself

STATUTORY INTERPRETATION — where s 14(3) of SRC Act provided for applicant to be given written notice by the trustee of a superannuation fund of its decision in relation to the payment of a death benefit — where letter giving written notice was posted to applicant’s solicitors who had corresponded with trustee on his behalf — where letter was not received by applicant’s solicitors — where applicant not advised of trustee’s decision until after expiry of prescribed period calculated from date of letter — whether applicant had been given written notice — whether s 29 of the Acts Interpretation Act 1901 (Cth) (‘AI Act’) applied to s 14(3) — whether s 14(3) authorised or required a document to be served by post — whether s 28A of the AI Act applied — whether s 28A authorised service by post on the applicant’s solicitors — whether non-delivery had been proved

Held: The Court declared that the applicant’s complaint had been made within the prescribed period.

Dargan v United Super Pty Ltd & Anor [2011] NSWSC 1316

SUPERANNUATION - Review of decisions, and related matters - work for which the insured is "reasonably fitted" by education, training or experience - whether different from "reasonably suited" or "reasonably qualified" - insured working as self-employed part-time taxi driver - must pass a Road Transport Training Course - insured had not done so at relevant time - whether education or training.

KCA Super Pty Limited as Trustee of the Superannuation Fund Known as 'KCA Super' (No 2) [2011] NSWSC 1301

TRUSTS - Trustees - Application for judicial advice - Trustee of superannuation fund seeks judicial advice as to whether it would be justified in consenting to reclassification of members of fund in line with determinations made by Company - Trustee’s consent to reclassification required under Trust Deed - reclassification would result in members of particular division being detrimentally affected - Company proposes to dissolve fund pursuant to power in trust deed - question whether consent to reclassification is a course reasonably open to a prudent trustee - trustee bound to act honestly and for proper purposes, taking into account the interests of members of trust - trustee must act impartially and fairly in relation to the different classes of members and avoid benefiting one class over another - Company’s proposal will result in detriment to class of members - subject to countervailing consideration trustee should not accept proposal - countervailing consideration that if Trustee does not consent Company proposes to dissolve fund - if fund dissolved members will be worse off than under Company’s proposal to reclassify and provide compensation - issue as to whether Company can lawfully dissolve trust - express power provided in Trust Deed untrammelled by express limitations - Company not a fiduciary - whether exercise of power moderated by implied obligation of good faith - even if had to exercise power honestly and in good faith would not preclude Company exercising power as proposed given purpose of power to provide mechanism for Company to free itself from onerous obligations under trust deed - Trustee justified in consenting to proposed reclassification of members.


CONTRACT – Interpretation – Managed investment scheme – Public unit trust - Membership in trust by application contained in information memorandum – Constitution and information memorandum formed the contract – Discretionary imposition of an exit fee up to 5% authorised by constitution – Initial information memorandum specified nil exit fee and required 30 days’ written notice of “any proposed change” to fees – Whether notification that after 30 days there would be a withdrawal fee of up to 5% of the withdrawal proceeds at the absolute discretion of the reasonable entity satisfied the notice requirement.

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