HERBERT SMITH FREEHILLS

SENATE COMMITTEE REPORTS ON SUPERANNUATION BILLS

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Legal Briefings – By **Sarah Yu**

On 23 October 2017, the Senate Economics Legislation Committee (**Committee**) released its reports on the proposed superannuation reforms.

Three superannuation bills were referred to the Committee for consideration: the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017 (Cth) (**No. 1 Bill**); the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017 (Cth) (**No. 2 Bill**); and the Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017 (Cth) (**Independent Directors Bill**).[1] The Committee recommended that all three bills be passed.

In summary, there were no surprises in the report with the Committee agreeing with the regulatory architecture of the bills. The Committee noted APRA's and Treasury's support for the bills and that the concerns raised in many of the submissions are addressed in the bills.

In response to the inquiry, the Committee received 69 submissions. The reports consider some of the issues raised in these submissions, before presenting the Committee's views. In general, the Committee welcomed the amendments.

In respect of the No. 1 Bill, the Committee stated that:

- the 'outcomes test' will deliver transparency and promote the interests of MySuper members, noting that MySuper products have always been subject to higher standards;
- APRA's enhanced powers are necessary to protect members and should be broadly expressed to enable proportionate application;

- enabling APRA to make reporting standards that require funds to provide detailed expense information about their operations and management is necessary to promote transparency and address deficiencies in the information currently reported to APRA;
- the proposed civil and criminal penalties to be imposed on trustee directors for breaching their fiduciary duties are similar to those imposed on directors of managed investment schemes; and
- the new requirement to hold annual members meetings promotes member engagement. However, the Committee encouraged re-examination of the relevant provisions to ensure they will operate as intended.

The Committee also embraced the amendments proposed in the No. 2 Bill, including the salary sacrifice integrity provisions. In respect of the choice of fund provisions, the Committee stated that extending the provisions to workplace determinations and enterprise agreements promotes greater engagement. However, the Committee noted that the effectiveness of the measures should be evaluated in two years from commencement, taking into account the Productivity Commission’s report on the competitiveness and efficiency of Australia's superannuation system, which will be finalised in 2018.

In respect of the Independent Directors Bill, while the Committee acknowledged that good governance also requires directors to have the requisite skills and values, the Committee emphasised the importance of directorial independence, and noted that the amendments are a step in the right direction.

As anticipated, the Labor senators expressed concern about the three bills, including whether the amendments are necessary and whether they achieve their stated objectives. The senators opposed the No. 1 Bill, unless it is to be applied consistently and comprehensively across the superannuation system, and the Independent Directors Bill. In respect of the No. 2 Bill, the Labor senators expressed general support. However, they recommended amending the bill:

- to ensure that there are no impediments to collective bargaining that would lift superannuation arrangements beyond the community standard; and
- to ensure that sufficient safeguards exist when workers exercise choice of fund.

ENDNOTES

1. For more information on the content of the three bills, read Herbert Smith Freehills' publication here.

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