

SUPERANNUATION REFORM SERIES PART I: ANNUAL MYSUPER OUTCOMES ASSESSMENTS

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Legal Briefings - By **Sarah Yu and Scott Donald**

On 14 September 2017, the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017 was introduced in the Senate.

One of the proposed amendments requires registrable superannuation entity (**RSE**) licensees to undertake and make publically available an annual determination as to whether the financial interests of their MySuper members are being promoted.

RATIONALE

According to the Explanatory Memorandum (**EM**) to the Bill, the amendments seek 'to ensure that trustees are promoting the financial interests of their MySuper members, which is expected to lead to an increase in the overall quality of MySuper products'. The EM notes that, currently, trustees of MySuper products can easily pass the annual scale test required of them under the *Superannuation Industry (Supervision) Act 1993* (Cth), even if they are underperforming relative to other MySuper products.

It is anticipated that 'a more comprehensive assessment of MySuper products will make trustees more accountable for their MySuper products and enhance APRA's ability to take specific action to ensure the trustee rectifies the performance of their MySuper product where the financial interests of members are not being effectively promoted'.

The EM emphasises that member outcomes are influenced by more than just the scale of the superannuation fund. Accordingly, the amendments intensify the current scale test, by requiring trustees to assess a wider range of characteristics of their MySuper product, and compare them against other MySuper products.

KEY PROVISIONS

To determine whether the financial interests of their MySuper members are being promoted, RSE licensees will be required to undertake a two-step process:

1. they must assess their MySuper product, considering a range of matters, including:

- the features of the product (ie options, benefits and facilities);
- the investment strategy of the product;
- the insurance strategy of the product; and

2. they must then compare their MySuper product against other MySuper products, considering a range of matters, including:

- fees, costs and taxes;
- return targets;
- actual returns; and
- investment risks.

The determination, along with a summary of the assessments and comparisons on which the determination is based, must be published on the superannuation fund's website within 28 days of the determination being made.

OBSERVATIONS

There are three observations worth making about the proposed amendments:

- they are likely to increase the risk to disengaged members: in circumstances where an adverse assessment is published, disengaged members are more likely to be left behind as compared to engaged members, who are likely to be quick to leave, thereby harming the disengaged members that MySuper is intended to protect;
- they are duplicative: a requirement already exists to consider whether insurance fees charged in relation to MySuper products inappropriately erode retirement incomes; and
- they are uncertain and, in some respects, unfeasible, in application:
 - there is no indication as to the relevant timeframe for the comparison of the returns for MySuper products. The inevitable variability of return over time in even the most conservative of investment portfolios means that the timeframe for such a comparison is critical; and
 - to the extent that trustees will be required to compare the taxes of competitor products to those in their MySuper product, information on the tax situation of superannuation products is not publicly disclosed.

The aims of the Bill to modernise and increase confidence within Australia's superannuation system should be welcomed. While there is some tension between these aims and the proposed amendments in their current form, the Bill has been referred to the Senate Economics Legislation Committee for reporting by 23 October 2017. It is hoped that the amendments will be considered closely in light of the aims of the Bill.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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