

BUZZ

AON CONSULTING LEGAL NEWS

In this issue:

SUPERANNUATION

- “Strong Super” – Government response to the Cooper Review
- ASFA response on Government response to the Cooper Review
- APRA releases proposal for consolidating prudential standards
- APRA advises need for sound risk governance processes for cloud computing
- AUSTRAC relief from AML/ CTF Obligations for flood payments

INSURANCE

- ASIC extends transitional period for group purchasing bodies to comply with breach reporting conditions
- APRA releases half yearly life insurance bulletin for June 2010

SUPERANNUATION

“Strong Super” – Government response to the Cooper Review

In December 2010 the Government released its response to the Cooper Review, which supports, in full or in principle, 139 of the Review’s 177 recommendations.

In their response the Government was mindful of three particular issues identified in the Review, namely:

- that fees in superannuation are too high;
- that choice of fund in superannuation has failed to deliver a 'competitive market that reduces costs for members'; and
- that there is too much “tinkering” in superannuation.

The Government focused on four key points from the Review, as follows:

- My Super

The Review found that many consumers do not have the interest, information or expertise required to make informed choices about their superannuation meaning that access to a safe, low cost and simple default superannuation product is essential to help many Australians' retirement savings go further.

My Super will serve as such a product for existing default super funds however the product will be non-compulsory for employees.

Superannuation funds will be allowed to provide My Super products from 1 July 2013. The requirements for these products will be documented in legislation and the products will be regulated by APRA.

In this issue:

While it will not be compulsory to offer a My Super product, it is anticipated that most funds will do so subject to satisfaction of the requirements, however superannuation funds will still be able to offer different products.

FINANCIAL PLANNING

↘ **Amended National Consumer Credit Regulations released**

↘ Super Stream

↘ **APRA releases updated guidance regarding online financial services disclosure**

A focus of the Review is improvement of the “back office” of superannuation which in broad terms the Government is supportive of. The Review included proposals to:

↘ **AUSTRAC releases draft updates to Chapter 15 of the AML/ CTF Rules – Ongoing Customer Due Diligence**

- ↘ improve the quality of data in the system;
- ↘ allow the use of tax file numbers (TFNs) as the primary account identifier;
- ↘ encourage the use of technology to improve processing efficiency; and
- ↘ improve the way fund-to-fund rollovers are processed and the way contributions are made.

↘ **Trade Practices Act – change of name**

↘ **SPAA welcomes rejection of additional investment restrictions for SMSFs**

The Government has indicated they are committed to extending the use of an individual's TFN as the primary identifier of member accounts from 1 July 2011. It is anticipated an increased use of TFNs will lead to a more robust identification method, lower fund administration costs, the ability to identify and possibly eliminate duplicate member accounts, reduced multiple accounts and potentially fewer lost superannuation accounts.

SEMINARS

↘ **January – March 2011**

Improved data quality and search processes should lead to a reduction in the number of inactive or lost member accounts in the system and an enhanced role for the Australian Taxation Office (ATO) is envisaged in facilitating a more efficient back office for superannuation. Additionally, both employers and employees will be provided with more information about their superannuation payments which will contribute to increased compliance with superannuation obligations by employers, a more timely recovery of superannuation guarantee payments from employers, provide employees with timely information that allows them to readily follow-up with the employer or the ATO where there has been non-payment of superannuation and encourage employees to be better engaged with their superannuation.

↘ SMSFs

The Government supports the initiatives contained in the Review to increase the integrity of the SMSF sector, including:

- ↘ Proof of identity checks will be required for all people joining an SMSF. Identification measures will not apply retrospectively except for existing SMSFs wishing to organise rollovers from an APRA-regulated fund
- ↘ New penalties (both criminal and civil) will be introduced to prevent illegal early release
- ↘ Increased ATO regulatory powers re breaches including the power to issue trustees with a direction to rectify contraventions within a specified timeframe

and to enforce mandatory education for trustees where there is non-compliance with the superannuation legislation

- ↘ Knowledge and competency requirements will be developed for SMSF service providers
- ↘ Governance, integrity and other regulatory settings

The Government considers that a risk-based approach that applies to all APRA-regulated funds and requires financial resources to be held against operational risk should replace the existing capital requirement for superannuation fund trustees. It is thought that introducing a risk-based system for maintaining financial resources against operational risk will better protect members from losses due to failures in the governance of their fund or in the business processes, systems or staff it employs. Additionally, employers can be confident that the default funds they select for their employees will be better able to safeguard their employees' superannuation benefits against operational risk.

The Government intends to consult closely with industry on how such financial resources should be held and methods for calculating such a requirement.

Next steps

- ↘ The Government will establish an overarching consultative group, comprising representatives of peak industry, employer, employee and consumer groups, to provide input on the design and implementation of the reforms.
- ↘ Sub-groups will provide more technical input on each of the key components of the reforms — SuperStream, MySuper, SMSFs, and broader consumer, governance and regulatory issues. These sub-groups will report back to the consultative group, and the views and comments expressed will be considered by Treasury in formulating advice to Government.
- ↘ Other interested stakeholders will be able to provide input to the design and implementation of the reforms via the Stronger Super website at <http://strongersuper.treasury.gov.au>.

To access the Stronger Super document in full, please go to:

http://strongersuper.treasury.gov.au/content/Content.aspx?doc=publications/government_response/summary.htm#govt_response

Source:

Australian Government Treasury website – 'Stronger Super'

ASFA response on Government response to the Cooper Review

ASFA have made the following high level observations regarding the Government's response to the Cooper Review:

1. MySuper can be offered from July 2013. There will be a significant transition period before SG payments can only be made into a MySuper product/option. It will not be compulsory for an employee to use a MySuper product.
2. No final decision has been made on whether intra-fund advice should be mandatory within MySuper.
3. The Productivity Commission will review the process of MySuper nomination in awards.
4. Importantly cross subsidies have not been banned and it will be up to trustees to make a fair and reasonable allocation of costs between MySuper and other products. Life and TPD cover needs to be offered on an opt-out basis. The Government will consult on whether or not post-retirement income products should be mandated for MySuper.
5. The existing equal representation model will continue but there will be greater focus on management of conflicts. The proposal for a "new office" of trustee director is noted but the Government will consider whether the proposed arrangements achieve a more accountable and efficient trustee governance regime.
6. SuperStream is in, but a lot of the detail will be worked out through consultation, so there is still uncertainty in this area. The Government will consult on whether or when data standards should become mandatory.
7. Administrators will not be licensed but they will attract greater scrutiny from both APRA and fund trustees.
8. APRA will get standards making powers and there will be extra levies, particularly to fund SuperStream.
9. SMSFs will be better regulated through broader ATO powers, will have to pay extra levies and there will be greater knowledge and competency requirements on advisers. The Government agrees that the accountants' exemption should be removed – and will consult further.
10. The prohibition on the cost of advice or services provided to employers is supported by the Government but will consult on implementation.
11. There is support in principle for risk based operational risk reserves, but once again the Government will consult widely on this issue.
12. CGT roll-over relief will not be extended instead relief may be provided to super funds who are required by APRA to merge in order to meet the MySuper requirements.

It is worth noting there are aspects ASFA do not agree with for example number 12 above where they disagree with the Government's case-by-case approach and consider it is imperative there is a general extension to CGT relief on fund mergers.

ASFA has indicated they have begun advocating in respect of the above point, as well as for the implementation of mandatory data standards together with the creation of a governance body supported by an appropriate regulatory structure.

ASFA has demonstrated their intention to be significantly involved in the consultation and implementation processes on the matters recommended in the Cooper Review.

Source:

ASFA Home, Issue 16, December 2010

ASFA Stronger Super Update, Issue 1, 23 December 2010

APRA releases proposal for consolidating prudential standards

APRA has released four draft cross-industry prudential standards that consolidate 12 existing industry-specific standards on the following topics:

- ↘ Outsourcing
- ↘ Business continuity management
- ↘ Governance and
- ↘ Fit and proper

The draft standards largely reflect the industry-specific standards and APRA does not intend to revisit the substance of these although some amendments are proposed in order to clarify and bring into line the current requirements across the industries.

It is considered that harmonisation of these standards across APRA-regulated industries will streamline the prudential requirements and make it easier for the industries to comply with these.

The discussion paper and draft standards can be found in full at www.apra.gov.au/Policy/Consolidating-prudential-standards.cfm.

APRA have invited comments on the discussion paper and draft prudential standards and submissions are due by 25 March 2011.

APRA expects to release the finalised prudential standards in mid 2011.

Source:

Australian Prudential Regulation Authority Media Release 'APRA releases proposals for consolidating certain prudential standards', 22 December 2010

APRA advises need for sound risk governance processes for cloud computing

APRA has recently released a letter to entities advising of the need for sound risk governance processes for all outsourcing and offshore arrangements, with particular emphasis on cloud computing.

Cloud computing generally describes a delivery model where dedicated or shared IT assets (software, hardware and data/information) are consumed as a service. This can involve the provision of IT assets by a third party located offshore. Examples of such services include mail (and instant messaging), scheduling (calendar), collaboration (including workflow) applications and CRM solutions.

Although the use of cloud computing is not widespread throughout the financial services industry, APRA noted that entities are beginning to use or consider using cloud computing based services. APRA's concern is that entities may not be subjecting these activities to such thorough oversight as existing outsourcing and risk management frameworks, and that board/s and senior management are not fully informed and engaged.

In the letter APRA highlighted key prudential concerns to be addressed by entities relating to the compromise of:

- ↘ a financial institution's ability to continue operations and meet core obligations, following a loss of cloud computing services;
- ↘ confidentiality and integrity of sensitive (e.g. customer) data/information; and
- ↘ compliance with legislative and prudential requirements.

APRA states that entities should achieve a full understanding of the potential risks involved in cloud computing before implementing any cloud computing services and directs trustees to the following Prudential Practice Guides (PPGs) that are pertinent to cloud computing:

- ↘ Outsourcing PPG 231
- ↘ Management of security risk in information and information technology PPG 234
- ↘ Pandemic planning and risk management PPG 233 insofar as it is relevant to business continuity issues.

Source:

Australian Prudential Regulation Authority, Letter to ADIs, GIs, LIs (including Friendly Societies) 'Outsourcing and Offshoring - Specific considerations when using cloud computing services', 15th November 2010

ASFA Home Issue 406, 13 December 2010

AUSTRAC relief from AML/CTF Obligations for flood payments

AUSTRAC has released Information Circular No. 74 which sets out its supervisory approach in response to the November 2010 to January 2011 floods and is welcomed by ASFA.

The relief covers the payment of benefits by superannuation funds on compassionate or severe financial hardship grounds.

Where APRA has authorised the release of benefits on compassionate grounds, or a fund approves the release of benefits under financial hardship grounds, AUSTRAC will take no action where a fund releases money to a person directly affected by the floods prior to carrying out the verification of identity required by section 32 of the AML/CTF Act.

ASFA has confirmed with AUSTRAC that the relief was not intended to apply to a person from a flood affected area seeking a benefit payment under a 'normal' condition of release.

The Information Circular can be accessed in full at:

http://www.austrac.gov.au/files/aic74_floods_sup_approach_jan2011.pdf.

Source:

ASFA Action, Issue 408, 17 January 2011

INSURANCE

ASIC extends transitional period for group purchasing bodies to comply with breach reporting conditions

ASIC has issued Class Order 10/1257 which extends the period for compliance by group purchasing bodies with the breach reporting condition detailed in previous Class Order 08/1.

Class Order 08/1 provides conditional relief from the Australian financial services licensing regime and Chapter 5C of the Corporations Act for certain group purchasing bodies that arrange or hold risk management products for the benefit of third parties on a non-commercial basis where it is considered to be disproportionately burdensome. Such relief is conditional upon various factors listed in the order.

One condition of the relief in Class Order 08/1, the breach reporting condition (paragraph 10 (f)), details that group purchasing bodies relying on the relief must notify ASIC in writing of matters that give the body reason to believe that it has failed in a material respect to comply with any of the other conditions in the relief (set out in paragraphs 10 (a) – (e)).

The transitional period for compliance with the breach reporting condition was due to expire on 31 December 2010 but has been extended by Class Order 10/1257 to 30 June 2011.

Source:

*Australian Securities & Investment Commission – Class Order [CO 10/1257]
Extension of period for compliance with breach reporting conditions in CO 08/1*

*Australian Securities & Investment Commission, Media Release,
24 December 2010*

APRA releases half yearly life insurance bulletin for June 2010

APRA has released their half yearly life insurance bulletin which provides a summary of the Australian life insurance industry for the financial year ending 30 June 2010 and includes entity level performance, position and solvency data.

Data in the publication is sourced from regulatory returns submitted to APRA by authorised life insurance companies.

The report is available on the APRA website at:

<http://www.apra.gov.au/Statistics/upload/HYLIB-Jun-10-20110105-4.pdf>

Source:

Australian Prudential Regulation Authority, Half Yearly Life Insurance Bulletin for June 2010 (issued 5 January 2011).

FINANCIAL PLANNING

Amended National Consumer Credit Regulations released

National Consumer Credit Protection Amendment Regulations 2010 (no.4) have been released to amend the existing Regulations by providing flexibility for licensees and credit providers in meeting disclosure requirements under the Credit Act while still delivering appropriate levels of protection to consumers.

The Regulations commenced on 1 January 2011.

Specifically, the Regulations:

- ↘ provide temporary and conditional transitional relief between 1 January 2011 and 1 April 2011 to persons who are otherwise required to provide a document disclosing information about their activities to consumers under a provision of the Credit Act;
- ↘ exempt persons from the requirement to provide a disclosure document known as a credit guide in a number of specific situations where this results in duplication or is otherwise unnecessary (for example, because the consumer has previously been given one and the information has not changed);
- ↘ provide a transitional period in which a person can update their credit guide, and still provide the earlier version of their credit guide;
- ↘ exempt persons who provide credit assistance from having to give a quote where they will not be charging the consumer a fee;
- ↘ provide greater clarity about the methods in which a consumer can be given a disclosure documents; and
- ↘ specify that two or more disclosure documents can be combined (provided that they otherwise meet the requirements of the Credit Act).

The Regulations are available in full at:

[http://www.comlaw.gov.au/comlaw/Legislation/LegislativeInstrument1.nsf/0/B134A50224A82476CA2577F40004690C/\\$file/1018296A101130EV.pdf](http://www.comlaw.gov.au/comlaw/Legislation/LegislativeInstrument1.nsf/0/B134A50224A82476CA2577F40004690C/$file/1018296A101130EV.pdf)

Source:

Select Legislative Instrument 2010 No. 333 and Explanatory Statement, Issued by authority of the Assistant Treasurer, Minister for Financial Services and Superannuation regarding the National Consumer Credit Protection Act 2009 and the National Consumer Credit Protection Amendment Regulations 2010 (No.4)

ASIC release updated guidance regarding online financial services disclosure

ASIC has released Class Order 10/1219 which provides specific clarification regarding the online provision of Financial Services Guides, Product Disclosure Statements and Statements of Advice.

The Class Order, subject to the agreement of the client or their agent, allows:

- a. PDS, FSGs, Supplementary FSGs and SOAs to be delivered by sending clients a written (paper or electronic) notice with a reference to a website address where the disclosure can be found; and
- b. PDSs, FSGs and Supplementary FSGs to be delivered by sending clients an email with a hyperlink to the disclosure. The relief does not apply to enable SOAs to be delivered via a hypertext

The class order can be viewed in full at:

[http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/386D33FC2281CB15CA2577F7007FAC0B/\\$file/101219.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/386D33FC2281CB15CA2577F7007FAC0B/$file/101219.pdf)

In addition, ASIC has released Regulatory Guide 221 - Facilitating online financial services disclosure.

This Guide reiterates the contents of the Class Order and also details ASIC's interpretation of the online disclosure provisions in the Corporations Act 2001. It includes good practice guidance for online delivery of financial services disclosure to ensure that information is provided in a clear, concise and effective manner as well as minimising exposure to security risks where disclosure has been performed online.

Source:

Australian Securities & Investment Commission – Class Order [CO 10/1219] (FED) Explanatory Statement, 13 December 2010

Australian Securities & Investment Commission Regulatory Guide 221 – Facilitating online financial services disclosures, December 2010

AUSTRAC releases draft updates to Chapter 15 of the AML/CTF Rules

Chapter 15 – Ongoing Customer Due Diligence

Chapter 15 of the AML/CTF Rules sets out the requirements that reporting entities must follow in regard to ongoing customer due diligence including the requirement for an enhanced customer due diligence program to be included in their AML/CTF Program.

Specifically, Chapter 15.10 provides that the enhanced customer due diligence program must include appropriate risk based systems and controls to be undertaken by an entity in cases where advanced customer due diligence is applied.

As a result of public consultation, AUSTRAC proposes to update Chapter 15.10. In the draft updates, where an ML/TF risk or suspicion is identified, the entity must undertake at least one or the following:

- 1) seek information from the customer or from third party sources in order to:
 - (a) clarify or update KYC information already collected from the customer;
 - (b) obtain any further KYC information; including, where appropriate, taking reasonable measures to identify:
 - (i) the source of the customer's wealth;
 - (ii) the source of the customer's funds; and
 - (iii) the ultimate beneficial ownership of the customer (if a non-individual);
 - (c) clarify the nature of the customer's ongoing business with the reporting entity;
 - (d) consider any suspicion that may have arisen for the purposes of section 41 of the AML/CTF Act;
- 2) more detailed analysis in respect of the customer's KYC information; including, where appropriate, taking reasonable measures to identify:
 - (a) the source of the customer's wealth;
 - (b) the source of the customer's funds;
 - (c) the ultimate beneficial ownership of the customer (if a non-individual);
- 3) verify or re-verify KYC information in accordance with the customer identification program;
- 4) more detailed analysis and monitoring be undertaken in respect of the customer's transactions – both past and future; including, but not limited to:
 - (a) the purpose or nature of specific transactions; or
 - (b) the expected nature and level of transaction behaviour;

- 5) seek senior management approval for:
 - (a) establishing, or continuing with a business relationship with a customer;
 - (b) whether a transaction on an account should be processed; or
 - (c) whether the designated service should commence to be provided or continue to be provided to the customer;
- 6) any other action that meets the same standard as those specified in subparagraphs 15.10(1) – (5), relating to the identified ML/TF risk or suspicion;
- 7) as well as lodge a suspicious matter report, if required, in accordance with section 41 of the AML/CTF Act.

The intended effect of such changes is to remove the 'discretionary' element that currently exists in Chapter 15.10 as to whether the entity takes action or not. The amendments also broaden the potential actions an entity may take by the inclusion of 15.10(6).

To view the draft rules and explanatory note for consultation in full please see: http://austrac.gov.au/files/draft_rules_amend_2nd-revision_chp15_dec2010.pdf.

Source:

AUSTRAC website: http://austrac.gov.au/aml_ctf_rules.html

Trade Practices Act – change of name

On 1 January 2011 the Trade Practices Act 1974 became the Competition and Consumer Act 2010 and incorporates a national set of consumer protections known as the new Australian Consumer Law.

The Australian Competition and Consumer Commission ('the ACCC') will monitor compliance with the new consumer protection provisions and encourages consumers and businesses to be aware of their new rights and obligations. Together with territory consumer protection agencies, the ACCC will be responsible for enforcing the Australian Consumer Law.

The Australian Consumer Law amalgamates a number of national, state and territory consumer protection laws to ensure consistency in the rights of consumers throughout Australia and includes:

- ↘ a new, national unfair contract terms law covering standard form contracts;
- ↘ a new, national law guaranteeing consumer rights when buying goods and services, which replaces existing laws on conditions and warranties;
- ↘ a new, national product safety law and enforcement system;
- ↘ a new, national law for unsolicited consumer agreements, which replaces existing State and Territory laws on door-to-door sales and other direct marketing;
- ↘ simple national rules for lay-by agreements; and
- ↘ new penalties, enforcement powers and consumer redress options, which currently apply nationally.

Transactions that occurred up to 31 December 2010 will continue to be regulated by the previous national, state and territory consumer laws.

There are a series of Australian Consumer Law guides available on the below website on the following topics:

- ↘ Avoiding unfair business practices
- ↘ Consumer guarantees
- ↘ Product safety
- ↘ Sales practice
- ↘ Unfair contract terms
- ↘ Compliance and enforcement

Source:

Australian Competition and Consumer Commission, News Release 'New legal protections for Australian consumers have begun', 4 January 2011

Australian Consumer Law website:

http://www.consumerlaw.gov.au/content/Content.aspx?doc=the_acl.htm

SPAA welcomes rejection of additional investment restrictions for SMSFs

The Self-Managed Super Fund Professionals' Association of Australia (SPAA) has welcomed the Federal Government's response to the Cooper Review relating to the SMSF sector which includes:

- ↳ no additional restrictions on what SMSFs can invest in (the Cooper Review had recommended that amendments be made to the effect that no in-house asset investments be permitted);
- ↳ higher standards for SMSF advisers including establishment of a SMSF specialist knowledge component of advice standard RG 146 as it is believed there is a need to improve this basic standard for superannuation advice;
- ↳ consideration of a 'restricted licence' arrangement for accountants who provide limited superannuation advice (the Cooper Review had recommended that a full AFS licence replace the accountants exemption).

The SPAA sees the Government's response as confirmation that the SMSF sector is performing well and does not need significant intervention or overhaul and is in line with the SPAA's opinion that, as far as possible, SMSF investments should be free from government intervention.

Source:

*Self-managed Super Fund Professional Association of Australia Media Release
'SPAA welcomes rejection of additional investment restrictions for SMSFs' –
16 December 2010*



SEMINARS

January – March 2011

Please find below a selection of upcoming industry seminars which may be of interest to you. If you have any queries about these, please do not hesitate to contact us.

January 31

AILA NSW, Climate Change and Insurance Law

Sydney Go to <http://www.aila.com.au>

February 2

AILA QLD, Climate Change and Insurance Law

Brisbane Go to <http://www.aila.com.au>

February 15

ANZIIF SA, General Insurance Law Annual Review

Adelaide Go to <http://www.theinstitute.com.au>

February 23

ANZIIF NSW, Introduction to General Insurance Workshop

Sydney Go to <http://www.theinstitute.com.au>

February 24

ANZIIF QLD, General Insurance Law Annual Review

Brisbane Go to <http://www.theinstitute.com.au>

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