Article Information

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Super ban on super funds

The government has released draft legislation intending to reform the superannuation system.

On 26 November 2020, the Treasury released the 'Your Future, Your Super' package aimed at reforming the superannuation system to deliver better outcomes for superannuation members. The suite of reforms follows the announcement in the October 2020/21 Budget addressing some of the pertinent concerns and criticisms of the current superannuation system. In line with these proposed amendments, iconic superfund ads are likely to be banned as well.

Background

It was announced in the October federal budget that amendments to the superannuation industry would be made to address certain flaws in the system.

In accordance with this announcement, Treasury released draft legislation on 26 November 2020. It seeks a reform of the superannuation industry that is designed to save super fund members $18 billion over a decade.[1] As part of the proposed reforms the following key documents were released:

1. Treasury Laws Amendment (Measures for a later sitting) Bill 2020: Best Financial Interests Duty;
2. Treasury Laws Amendment (Measures for consultation) Bill 2020: Single default account; and
3. Treasury Laws Amendment (Measures for a later sitting) Bill 2020: Addressing underperformance in superannuation.

The intended legislation contains the following elements:

1. requiring employers to contribute to an employee's existing fund, if new employees have one and choose a fund to receive the contributions. This is to avoid unnecessary fees and insurance premiums being paid on multiple superannuation accounts;
2. requiring APRA to conduct annual performance tests for MySuper products and others similarly specified in regulations. Trustees will be required to give notice to members if a product fails the test. If it has failed consecutively twice, the trustee will be prohibited from accepting new beneficiaries into that product. This prohibition may be lifted if the circumstances specified in the regulations are satisfied and will ensure underperforming superannuation products are held to account;
3. certainty and transparency about the basis by which superannuation products will be ranked and published on a website maintained by the ATO; and
4. requiring superannuation trustees to act in the best financial interests of members.[2]

Best financial interest duty

These new legislative reforms introduced by Treasury clarify superannuation trustees' obligations to act in the "best *financial* interests" of superannuation members instead of simply acting in their "best interests". Treasury's intended reforms will require trustees and directors of corporate trustees to solely have regard to financial interests, eliminating the possibility to act in a manner that they believe will improve the non-financial interests of members and not their financial interests.

The amendments further clarify the standards which must be met when making expenditure decisions and undertaking actions in relation to the fund's operation to cater for the best financial interests of members. These changes come after

AustralianSuper, Australia's largest fund was accused of breaching the 'best interests' test in February 2019 by offering 20,000 Qantas Frequent Flyer points to induce more memberships. This inducement was considered to be breaching the test which ensures funds are maintained to provide benefits to members when retiring or to beneficiaries if members die. However, these bonus points have no benefit to a member's accumulation, asset allocation, investment performance or insurance options. Furthermore, it was criticised as not having any relation to retirement savings.[3]

Your Future, Your Super package

An amendment to superannuation advertisements led by Senator Andrew Bragg and aptly named the 'Bragg amendment' intends to end the era of TV campaigns such as Industry Super Australia's infamous 'Compare the Pair', 'We're all in this together' and 'Fox and the Henhouse' anti-bank advertisements.[4]

In support of the reforms Senator Bragg relied on Nielsen data revealing that trade union-linked industry superannuation funds had spent more than $40 million over the past year promoting the superfund lobby group.

Furthermore, the funds' investment in news reporting website *The New Daily* received backlash from MPs due to their undeclared donation to the Federal Labor Business Forum which helps raise money for the Labor party. However, Industry Super Holdings, the parent company of four related entities including Industry Super Australia, refused to disclose how much capital they have allocated to the "loss-making media".[5]

The Labor party and Super industry lobbyists have pushed back on the Morrison government's attempt to outlaw unjustified advertising and benchmark the performance of superannuation funds. The amendments were criticised as encouraging funds to abandon active investment strategies in favour of passive investment strategies. Financial Services Minister Jane Hume however was quick to dismiss these concerns, emphasising that chronic underperformers need to improve.[6]

The amendments follow the release of The 'Callaghan Report' on 19 November 2020 which concluded that without mandatory superannuation, many workers would fall short in retirement. The report also endorsed leaving the superannuation guarantee rate at 9.5% and not going ahead with the legislated plan to increase it to 12%, arguing that it would lower wage growth.[7] Though Treasurer Josh Frydenberg hinted that a delay in increasing the rate could be possible, he confirmed a formal decision would not be made until the May 2021 budget.

The intended reforms will see a significant shift in the superannuation industry and broaden the scope of APRA's grounds to dispute expenditure. Listed as one of its top priorities for 2020-2021, the reforms will arm APRA with the necessary tools to crack down on advertising expenditure by superfunds.

[1] Aleks Vickovich, 'Super fun ban on ads and lobby fees', 26 November 2020, *Australian Financial Review*

[2] Treasury, 'Your Future, Your Super package', 26 November 2020

[3] Duncan Hughes, 'AustralianSuper attracts flak as Qantas Frequent Flyer offer comes under fire', 14 February 2019, *Australian Financial Review*

[4] Ibid.

[5] Above n 1.

[6] Jane Hume, 'Too many pull losing tickets from a superfund lottery', 27 November 2020

[7] Aleks Vickovich, 'Callaghan opens new front in raging super wars', 19 November 2020, *Australian Financial Review*