



What's News?

Superannuation & Funds Management

9 June 2010

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Latest news

National

Baldock ordered to stand trial for victimisation

3 June 2010

The Australian Prudential Regulation Authority has initiated action against a former executive director of the Queensland Retail Traders and Shopkeepers Association (QRTSA) over alleged victimisation of superannuation trustees. See our earlier Update on this case in August 2009 ["Victimisation of Trustees"](#). [More...](#)

[APRA statement](#)

Be wary of hedge funds, investors urged

3 June 2010

A report released this week raised serious concerns over so-called hedge funds and the risks they take to make returns for their investors. However, Treasury's markets group general manager of the corporation and financial division said in Australia we have a fairly strong investor protection regime under the financial services regime. [More...](#)

Government digs in on commission removal

3 June 2010

The Federal Government has increased its commitment to the removal of commissions in financial planning, linking the move to the development of Australia as a regional financial services hub. [More...](#)

Unintended consequences in legislation amendments

1 June 2010

The Federal Government has introduced legislation aimed at reducing the risks for superannuation funds that are investing using limited recourse loans. Lawyers claim the Superannuation Industry (Supervision) Amendment Bill 2010 would make it more difficult to invest in shares, since investors would only be able to borrow to acquire a 'single acquirable asset'. [More...](#)

Australians failing to engage in super

1 June 2010

Many Australians are still not getting the message about consolidating their superannuation accounts, according to new research released by Sydney-based research house CoreData. [More...](#)

Government limits super gearing

31 May 2010

Federal Government has introduced legislation aimed at reducing the risks for superannuation funds that are investing using limited recourse loans. Under the new legislation, personal guarantees will not be banned, but the right of indemnity by the guarantor against the fund will be limited to the acquirable asset. [More...](#)

2010 Budget overview

31 May 2010

The Federal Treasurer, Wayne Swan, has handed down his third Budget. For 2010-11 and 2011-12, the Government plans to freeze the indexation applied on the income threshold above which the maximum superannuation co-contribution begins to phase down. The maximum co-contribution of \$1,000 is reduced by 3.333 cents for every dollar that a taxpayer's total income exceeds \$31,920 until it reaches or exceeds \$61,920. [More...](#)

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The future of Financial Advice reform proposals

31 May 2010

A spokesperson for the Minister for Financial Services, Superannuation and Corporate Law, Chris Bowen, states reform proposal did not apply to existing contracts. In relation to trail commissions, this means that any existing contract where the adviser has a right to receive a trail commission will continue after 1 July 2012. [More...](#)

CBA lags on planner action

31 May 2010

More clients have lost money from a former CBA planner as the bank delays legal proceedings. Commonwealth Financial Planning had previously said it would vigorously defend the actions against it through the courts should that be required. [More...](#)

More volatility hits super

27 May 2010

Super funds continue to be hit with market volatility as active investors face significant losses. The volatile world markets continue to hit local superannuation funds as they face a 3 to 5 per cent swing in performance returns, according to the latest SuperRatings report. [More...](#)

Regulation needed for competitiveness: Cooper

27 May 2010

The superannuation industry needs further regulation to promote efficiency for members that has not been achieved through market competition, according to super system review chair Jeremy Cooper. [More...](#)

Fund fees not coming down: Cooper

27 May 2010

Super System Review chair Jeremy Cooper said market forces in super aren't enough to drive the best outcome for members, arguing that contrary to industry claims, fund fees have gone up, not down, in the past decade. [More...](#)

Cooper review chairman continues pressure for fund mergers

27 May 2010

The chairman of the Cooper Review, Jeremy Cooper confirms his view that the pursuit of scale in the superannuation industry will drive greater efficiency and therefore lower fees. Citing a [Deloitte](#) report commissioned by his review panel, he said it provided empirical data that scale matters in super. [More...](#)

High Court upholds acquittal over fraud

26 May 2010

Two men who arranged for \$25 million defrauded from the Commonwealth Superannuation Scheme to be transferred to a Swiss bank account have had their acquittal confirmed by the High Court. A subsequent appeal to the High Court was lost after judges agreed that a person cannot be found guilty of conspiracy under the Criminal Code unless he or she knows, and is not simply reckless, the facts that make the proposed act or acts unlawful. [More...](#)

Launch of Demystifying Islamic Finance

27 May 2010

The Assistant Treasurer has launched a publication aimed at encouraging the growth of Islamic finance in Australia by dispelling the misconceptions about this important sector of global finance. The publication, entitled *Demystifying Islamic Finance: Correcting Misconceptions, Advancing Value Propositions* outlines 15 frequent misconceptions and 10 main value propositions of Islamic finance. [More...](#)

Breadth of reforms a key concern

27 May 2010

A key point of concern about the Future of Financial Advice reforms is its sheer size, according to Financial Planning Association (FPA), with the high degree of confusion and questions among financial planners was partly due to the immensity of the reforms. [More...](#)

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Practice notes/directions

Crime Stoppers: New superannuation fund identity fraud scheme

A recent police investigation has uncovered a multi-million dollar identity fraud scheme.

A crime syndicate has been emptying out the accounts of superannuation fund members by initiating fund rollovers to fake self-managed superannuation funds (SMSFs). People have been advised to check their superannuation fund benefit statements twice a year, to take extra care to protect their PINs and passwords, and to be careful who they give their personal information to. [More...](#)

New performance reporting standards for retail funds

26 May 2010

The Investment and Financial Services Association is implementing a new investment reporting format that will require retail super funds to revert back to performance figures gross of any ongoing and advice fees. The objective is to facilitate comparability of super fund returns across sectors, especially between not-for-profit funds and retail funds. The guideline changes that come into force on 1st July. There will be a two year transition period and reformatting of historical data will be optional. [More...](#)

Legislation

Commonwealth

ASIC Class Order [CO 10/407]

3 June 2010

This Class Order exempts the Australian Energy Market Operator (AEMO) and Trading Participants from the requirement to hold an Australian Financial Services licence covering the provision of specified financial services related to the operation of the ex ante market of the Short Term Trading Market for gas.

[More...](#)

Financial Sector Legislation Amendment (Prudential Refinements and Other Measures) Bill 2010

1 June 2010

To amend the law relating to banking, insurance and superannuation, and for other purposes. For a detailed discussion on amendments to superannuation see the Update circulated with this newsletter entitled "Removal of Trustee's right against self-incrimination in disqualification proceedings". [More...](#)

Cases

Merkel v Superannuation Complaints Tribunal [2010] FCA 564

ADMINISTRATIVE LAW – procedural fairness – whether denial of fair hearing – failure to make available adverse information that was credible, relevant and significant to the decision to be made and was relied on by decision-maker – decision that complaint outside jurisdiction of Superannuation Complaints Tribunal – decision based on information in documents provided by trustee of superannuation fund – documents not made available to complainant, even after request for them, when initial decision being reviewed by Tribunal's director.

SUPERANNUATION – Superannuation Complaints Tribunal – jurisdiction and powers – whether complaint related to the management of a fund as a whole – decision of trustee of superannuation fund to pay to beneficiary of deceased member a sum less than that standing to the member's credit, by

removing gains accumulated after death and substituting interest – whether decision made in application of rule or policy relates to management of fund as a whole.

COSTS – administrative decision-maker – whether order for costs should be made against decision-maker when decision set aside – decision by officer of Superannuation Complaints Tribunal that complaint was outside tribunal's jurisdiction – decision affirmed by tribunal's director – denial of procedural fairness – reliance on information supplied by trustee of superannuation fund that was not made available to complainant – failure to make available that information, even when requested by complainant – decision made without regard to authorities on statutory provision under which it was made – no subsequent action to remedy jurisdictional error.

[More...](#)

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Roy Morgan Research Pty Ltd v Commissioner of Taxation [2010] FCAFC 52

SUPERANNUATION – superannuation guarantee scheme – liability for superannuation guarantee charge – s 12(1) and s 12(3) Superannuation Guarantee (Administration) Act 1992 (Cth) definition of employee – whether interviewers employees or independent contractors.

CONSTITUTIONAL LAW – powers of Commonwealth Parliament – s 51(ii) taxation power – whether Superannuation Guarantee Charge Act 1992 (Cth) a law with respect to taxation – severability of Superannuation Guarantee Charge Act 1992 (Cth) and Part 8 Superannuation Guarantee (Administration) Act 1992 (Cth) – s 51(xxiii) invalid and old-age pensions power – whether Part 8 Superannuation Guarantee (Administration) Act 1992 (Cth) a law with respect to invalid and old age pensions.

[More...](#)

Edington v Superannuation Complaints Tribunal [2010] FCA 504

SUPERANNUATION – appeal from the Superannuation Complaints Tribunal – Tribunal affirmed decision of the Trustee of the Superannuation Fund not to pay any insurance benefit to the applicant who had been assessed as totally and permanently disabled after a workplace incident because the total and permanent disablement was related to his pre-existing medical condition.

APPEALS – consideration of the role of the Tribunal – Tribunal must affirm a decision of a Trustee if it is satisfied that the decision, in its operation in relation to the complainant, was fair and reasonable in the circumstances – Tribunal not to decide for itself the correct or preferable decision – Tribunal may make its own findings of fact only for the purpose of determining whether the decision under review was fair and reasonable – fairness and reasonableness to be assessed by reference to its impact on the complainant – Tribunal must not act in a way that is contrary to law.

[More...](#)

Disclaimer

The information in this publication is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, we do not guarantee that the information in this newsletter is accurate at the date it is received or that it will continue to be accurate in the future.

Lake Coogee Estate Management Pty Ltd ACN 115 352 504 v Australian Securities and Investments Commission (No 2) [2010] FCA 520

CORPORATIONS LAW – winding up of unregistered managed investment scheme – scheme insolvent – motion to have winding up continued by newly appointed liquidator. [More...](#)

Banksia Mortgages Limited v Croker and Ors [2010] NSWSC 535

PROCEDURE - legal professional privilege - advice given by in-house solicitor - both legal advice, commercial advice and comment - independence of solicitor - legal advice privileged, commercial advice and comment not privileged - communication between defendants and solicitor used as basis for affidavit sworn by solicitor to defend plaintiff's claim for summary judgment - waiver in defendants' communication thereby established. [More...](#)

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