



What's News?

Superannuation & Funds Management

26 May 2010

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National

Treasury clarifies position of salaried advisers

21 May 2010

The Treasury has provided further clarity on how salaried bank financial advisers will be dealt with as part of the proposed Future of Financial Advice reforms. The reforms include the introduction of the statutory fiduciary duty that financial advisers must act in the best interests of their clients. [More...](#)

High-risk MIS advice attracts FOS penalties

21 May 2010

The Financial Ombudsman Service (FOS) upheld four complaints against advisers in March for inappropriately directing clients to establish self-managed super funds (SMSFs) and then invest in high-risk real estate managed investment schemes (MISs) that later defaulted. [More...](#)

Superannuation funds down in April

20 May 2010

Superannuation funds were slightly down in April, by a negligible 0.1 percent, following the mixed performance of global share markets due to the Greek sovereign debt crisis. [More...](#)

KPMG challenges ASIC over Westpoint

19 May 2010

Accountancy group KPMG has initiated a High Court challenge against the Australian Securities and Investments Commission (ASIC) relating to compensation for Westpoint investors. KPMG is seeking a declaration that section 50 of the ASIC Act, which empowers the regulator to carry on a proceeding in the name of a company, is unconstitutional. [More...](#)

Large super funds inactive on co-contributions

19 May 2010

The superannuation co-contribution regime has not gained as much penetration as originally envisaged, with at least some of the blame residing with the inactivity of large superannuation funds, according to an Australian National Audit Office (ANAO) report. [More...](#)

Super fund identity fraud on the rise

19 May 2010

Australians are being urged to regularly check their superannuation accounts, amid warnings that fraudulent access to such accounts through identity fraud is rising. NSW Police investigators have uncovered a multi-million dollar identity fraud scheme, used by a crime syndicate to empty out the accounts of super fund members by initiating fund rollovers to fake self-managed super funds. [More...](#)

National CGT changes improve ability for firms to restructure

11 May 2010

The government says it will allow Australian interest holders access to a broader range of CGT roll-overs where an entity restructures using a share or interest sale facility for foreign interest holders. The government also said it would amend the CGT demerger relief provisions so that demerger groups, which currently include corporations sole or complying superannuation entities, can benefit from the CGT demerger roll-over. [More...](#)

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National Centre to boost quality of financial regulation

12 May 2010

The government has announced the setting up of the Centre for International Finance and Regulation to boost Australia as a regional financial hub. The government will invest \$25 million over four years to set up the centre to provide training for financial regulators from Australia. The funding also includes research developments in the global financial system, research best practice in financial regulation and ways to enhance financial stability. [More...](#)

National approach to cyber crime

11 May 2010

The Standing Committee of Attorneys-General have agreed to a national approach to combating cyber crime, including the establishment of a National Cyber crime Working Group to review Australian arrangements to fight cyber crime and enhancing coordination between Commonwealth, State and Territory law enforcement agencies. [More...](#)

Articles

My Super: optimising Australian superannuation: second phase one: preliminary report [Cooper Report]

Author: Australia. Review into the Governance, Efficiency, Structure and Operation of Australia's Superannuation System, 2010; 14 pp
Superannuation fund industry; Management; Prudential supervision; Committees and inquiries; Models; Review into the Governance, Efficiency, Structure and Operation of Australia's Superannuation System (Cooper review); MySuper. [More...](#)

Australia's future tax system: report to the Treasurer [Henry Report]

Author: Henry, Ken; Australia's Future Tax System Review Panel
Source: [Canberra: The Treasury], 2009; 3 v.
Australia's Future Tax System Review; Tax reform; Tax policy; Resource rent tax; Economic growth; Income tax; Company tax; Consumption tax; Federal state finances; Infrastructure; Resource exploration; Small business; Superannuation; Retirement income; Committees and inquiries; Trends to 2020; Statistics.
www.ato.gov.au

Practice notes/directions

APRA releases discussion paper to update general and life insurance capital standards

13 May 2010

The Australian Prudential Regulation Authority has released a discussion paper describing its proposals to update the capital standards for general insurers and life insurers. [More...](#)

ASIC guidance for trustee companies providing traditional services

11 May 2010

ASIC released updated policy and regulatory guidance to assist trustee companies providing traditional trustee company services (traditional services) to comply with the licensing and conduct requirements under the Corporations Act. [More...](#)

ASIC Corporate Finance Liaison meetings in June 2010

ASIC will be hosting its bi-annual Corporate Finance Liaison meetings in June. Lawyers, corporate advisers and compliance professionals working in capital markets and securities, mergers and acquisitions and corporate finance are invited to attend these meetings. [Corporate Finance Liaison meetings in June](#)

Super changes in the wind

The *Cooper Review* into superannuation has proposed the introduction of new legislation to govern self-managed retirement funds, and a toughening up of some of the rules regulating investments by the funds. If the Review's recommendations become law, SMSFs that own the prohibited assets will have up to 30 June 2020 to dispose them or move them out of their fund. [More...](#)

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Legislation

Commonwealth

Corporations Amendment Regulations 2010 (No. 4)

10 May 2010

Legislative Instrument Number: SLI 2010 No. 89 - These Regulations amend the Corporations Regulations 2001 to make arrangements for margin lending facilities consequent to the changes made to the Corporations Act 2001 by the Corporations Legislation Amendment (Financial Services Modernisation) Act 2009. [More...](#)

Australian Securities and Investments Commission Amendment Regulations 2010 (No. 2)

10 May 2010

Legislative Instrument Number: SLI 2010 No. 87 - These Regulations amend the Australian Securities and Investments Commission Regulations 2001 to support the national regulation of margin loans which was implemented by Schedule 1 of the Corporations Legislation Amendment (Financial Services Modernisation) Act 2009. The Regulations provide that the Australian Securities and Investments Commission Act 2001 provisions relating to misleading, deceptive and unconscionable conduct apply to margin loans. [More...](#)

Cases

JTMJ and Australian Securities and Investments Commission [2010] AATA 350

CORPORATIONS LAW – banning order – whether transaction likely to have had effect of creating artificial price for trading in financial product – whether misleading or deceptive conduct – whether falsification of records – decision varied. [More...](#)

Mercedes Holdings Pty Limited v Waters (No 2) [2010] FCA 472

CORPORATIONS – Managed Investment Schemes – Contravention of provisions by officers and auditors of the scheme – Compensation sought – Whether investors are limited to remedies against the responsible entity

PRACTICE AND PROCEDURE – Pleadings – Statement of claim – Particulars – Purpose to outline the manner in which an allegation will be proven

STATUTES – Interpretation – Explanatory material – Cannot subvert ordinary meaning of statute

TRUSTS – Beneficiary – Standing – Trustee unwilling to sue – Where beneficiary and trustee have separate causes of action but similar losses there is no bar to the beneficiary pursuing his/her own claim – Unlike principle of ‘reflective loss’ in corporate law – Gould v Vaggelas (1985) 157 CLR 215 – dismissed.

[More...](#)

Kowalski v Superannuation Complaints Tribunal [2010] FCA 473

ADMINISTRATIVE LAW – appeal against decision of Superannuation Complaints Tribunal under s 46 of Superannuation (Resolution of Complaints) Act 1993 (Cth) – whether decision to refuse to exercise jurisdiction amounts to determination under s 46 of Superannuation (Resolution of Complaints) Act 1993 (Cth)

Held: appeal dismissed – definition of determination under s 46 of Superannuation (Resolution of Complaints) Act 1993 (Cth) limited to final and ultimate determination of substance of complaint.

[More...](#)

Brightstar Logistics Pty Ltd v Australian Securities and Investments Commission (No 2) [2010] FCA 435

CORPORATIONS – financial disclosure - application for financial disclosure exemption - lodgement – whether unreasonable burden – whether lodgement would provide relevant benefit – whether company exposed to burden or risk of substantial detriment – whether Tribunal erred when it affirmed ASIC’s decision. [More...](#)

YFFM and Australian Securities and Investment Commission [2010] AATA 340

Corporations law – banning order – alleged contravention of the “insider trading” provisions of the Corporations Act – applicant banned for 5 years – decision affirmed – turns on its own facts

order pursuant to sections 920A and 920B of the Corporations Act prohibiting the applicant from providing any financial services for a period of 5 years. [More...](#)

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Re ANZ Nominees Limited [2010] VSC 197

TRUSTS – Plaintiff custodian of assets – Termination of custody agreements – Assets of agreement not yet transferred to successor custodian – Shares in a foreign corporation – Corporation nearing insolvency – Restructuring proposal – Instructions unable to be obtained – Application for the power to authorise and direct the execution of documents – Power of the Court to rule upon propriety of contemplated exercise of discretion – Whether it is expedient in the interests of the beneficiaries to order pursuant to s 63 of the Trustee Act 1958 (Vic) the authority sought by the Plaintiff – Hornsby v Playoust (No. 2) [2005] VSC 125 – Trustee's costs of the application on an indemnity basis – Re Pasmenco Limited [2004] FCA 656; 49 ACSR 470. [More...](#)

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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.

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