

ELECTION COMMITMENTS

IMPLEMENTATION OF SUPERANNUATION REFORM	1
STRENGTHENING CORPORATE LAW TO PROTECT WORKERS' ENTITLEMENTS	3
NEW RULES FOR REVERSE MORTGAGES	4
CREDIT CARD CONSUMER PROTECTION REFORMS	5
NOT-FOR-PROFIT REFORM	6
TAXATION GOVERNANCE REFORM	7
TAX BREAKS FOR GREEN BUILDINGS.....	9
SIGNIFICANT TRANSPORT INFRASTRUCTURE PROJECTS	10

Implementation of superannuation reform

Outline of issue You have committed to some of the key reforms recommended by the Super System (Cooper) Review and to provide a full response to the review's recommendations by the end of the year.

Your Government already announced other reforms to superannuation (in response to the Australia's Future Tax System report), including increasing the Superannuation Guarantee (SG) to 12 per cent, a new low income earner government contribution tax rebate, increased annual contribution caps for those over 50 with balances below \$500,000 and an increase in the SG age limit to 75.

Key Points Your commitments include:

- reforming to the design and regulation of those superannuation products aimed primarily at members who have little interest in their superannuation (MySuper);
- using tax file numbers as the primary identifier of member accounts, as a first step in modernising the back-office functions of superannuation funds (SuperStream);
- responding to the remaining Super System Review recommendations before the end of the year; and
- ensuring the provision of additional information to both employees and employers about the payment of superannuation contributions.

Other significant recommendations in the Super System Review include:

- the remaining aspects of the SuperStream package of measures, such as the increased use of technology and uniform data standards;
- elevating systemic efficiency and transparency through enhanced powers for APRA, introducing capital requirements for super funds, and promoting better industry arrangements in relation to scale and governance; and
- regulatory enhancements to the significant and growing self-managed superannuation fund sector.

Sensitivities While the Super System Review consulted extensively, there has not been full consultation on its final recommendations and some criticism has been levelled at parts of the report. Sections of the industry have indicated reservations with MySuper. However, there is general industry support for SuperStream.

Next Steps The Government has committed to consulting closely with industry and consumer groups on the detailed implementation and transition arrangements related to your MySuper commitment.

An early government decision to commit to the SuperStream reforms would allow consultation with industry to commence before the end of the year.

We will provide more detailed advice on progressing MySuper, SuperStream and the balance of the Super System Review's recommendations.

Discussion papers on implementation issues for the low income earners contribution and the increased annual contribution caps are being prepared with consultation planned in the coming months.

Contact	Jonathan Rollings	6263 3012
	Markets Group	
	Financial System Division	

Strengthening corporate law to protect workers' entitlements

Outline of issue The election commitment to strengthen law to enhance protection for workers' entitlements has three elements:

- give ASIC stronger powers to put 'abandoned' companies into liquidation quickly, so employees can access entitlements;
- align the bankruptcy law and corporate insolvency law protections; and
- make company directors personally liable for all debts of a failed company if the company has a deceptively similar name to previously failed companies of which those persons were also directors.

Key Points Worker entitlements are protected under the existing General Employee Entitlements and Redundancy Scheme (GEERS), whereby entitlements and redundancy payments up to certain levels can be paid by the Government if a company enters into external administration. A related election commitment will increase the amounts payable under GEERS.

Worker entitlements are protected under corporate and bankruptcy laws by being preferential payments (that is, payable ahead of other unsecured creditors) but the protections under the corporate and bankruptcy laws differ.

Sensitivities Key challenges regarding extending ASIC powers will be to design a system that correctly identifies 'abandoned' companies and avoids liquidating companies that might still have viable businesses. A key challenge regarding the similar names proposal is to avoid reducing the potential recovery of value for goodwill associated with an enterprise name.

Next Steps We propose to provide detailed advice on progressing the ASIC powers and similar names proposals, including advice on consultations as required. The personal bankruptcy laws are in the Attorney-General's portfolio.

Contact **Geoff Miller** **6263 3970**
Markets Group
Corporations and Financial Services Division

New rules for reverse mortgages

Outline of issue The election commitment: Delivering for Seniors — New Rules for Reverse Mortgages to Protect Seniors, proposes to enhance protections for consumers in relation to reverse mortgages and home reversion scheme products by:

- extending protections for consumers who enter into reverse mortgages and home reversion schemes, including greater disclosure of the features and fees on these products; and
- establishing statutory protection against negative equity.

The changes will be implemented by mid 2012.

Key Points Reverse mortgages carry unique risks and have complex financial and legal impacts for borrowers, which are different from more traditional credit products. These risks can result in consumers being left with a debt significantly greater than the value of their property.

Home reversion scheme products are used by older Australians to unlock the equity in their homes and are regarded as a functionally similar product to a reverse mortgage. Consequently, consumers face similar risks across the two products.

Sensitivities The main industry body in the equity release market (SEQUAL) would be likely to resist Government regulation beyond those imposed by the SEQUAL Code of Conduct and Guidelines.

Other stakeholders, including seniors, consumers and legal groups have expressed in-principle agreement with the measures outlined in the election commitment.

Since a home reversion scheme is not a credit product currently regulated under the National Credit Code, the Commonwealth may require a referral of power from the States in order to provide seniors with protections in relation to these products.

Next Steps We will provide detailed advice regarding this commitment via the Regulation Impact Statement and Cabinet Submission to be provided to your Government as part of Phase Two of the National Consumer Credit Protection Reforms.

Contact **Geoff Miller** **6263 3970**
Markets Group
Corporations & Financial Services Division

Credit card consumer protection reforms

Outline of issue	<p>The election commitment Fairer, Simpler Banking aims to:</p> <ul style="list-style-type: none">• give consumers a better deal when it comes to credit card fees and charges;• give consumers more say over their credit card products; and• make it easier for consumers to understand credit card products. <p>These policies will also mitigate some lending practices which are perceived to lead to consumers taking on more debt than they can comfortably afford and which can increase the interest paid by consumers on their credit card debts over the life of the contract.</p> <p>The changes will be implemented by mid 2012.</p>
Key Points	<p>These proposals have been canvassed in public and stakeholder consultations undertaken as part of Phase Two of the National Consumer Credit Protection Reforms.</p>
Sensitivities	<p>Industry is expected to have strong views in response to these reform proposals. While there are compelling arguments in favour of the proposals in terms of consumer fairness, banks are likely to view the proposals as an attempt to undermine their business models and capacity to lend prudently.</p> <p>The Australian Bankers Association has said the Labor policy was unnecessary because the vast majority of Australians used their credit cards responsibly and that most credit card default was due to personal circumstances rather than bank marketing. This is consistent with their submission to the Green Paper.</p> <p>However, the NAB has indicated support for one of these reforms as it already has abolished over-limit fees.</p>
Next Steps	<p>We will provide detailed advice regarding this commitment via the Regulation Impact Statement and Cabinet Submission to be provided to your Government as part of Phase Two of the National Consumer Credit Protection Reforms.</p>
Contact	<p>Geoff Miller 6263 3970 Markets Group Corporations & Financial Services Division</p>

Not-for-profit reform

Outline of issue Governance, regulation and taxation of not-for-profit (NFP) entities falls significantly short of public expectations and minimum standards. Further, the existing arrangements are considered overly complex and inconsistent, particularly when operating across jurisdictions, which unnecessarily increases compliance costs and inequity.

A lack of appropriate transparency and accountability frameworks undermines public confidence in this growing sector, reducing philanthropic engagement and support for government funding.

Key Points Your Government announced that it would undertake a scoping study to determine the role and design options for a national ‘one-stop shop’ regulator for the NFP sector, to remove the complex regulatory arrangements currently in place and streamline reporting arrangements.

Scope exists for immediate action at the federal level, utilising the ATO’s current powers and role of administering Commonwealth tax concessions, while the Government progresses a national regulator. In particular, scope exists for streamlining and simplifying federal arrangements and ensuring that the assets of charities are adequately protected when organisations undertake risky activities.

The Government also announced an Office for the NFP Sector, a sector Reform Council, greater harmonisation and simplification between the federal and state governments on NFP issues, and reducing red-tape for government funded NFP organisations.

Sensitivities The sector will be expecting genuine reform, particularly given the five reviews and lack of significant reforms over the past 15 years.

There is a risk that the sector will seek greater concessional treatment through a reform process. Reform at a national level, including a one-stop shop regulator, will require cooperation with the states.

Next Steps We will provide a Minute outlining a proposed reform agenda, including reform direction, processes and timing for Cabinet consideration and consultation with the sector and the states.

Contact **Tony Coles** **6263 3215**
Revenue Group
Personal & Retirement Income Division

Taxation governance reform

Outline of issue	<p>Your Government announced it would reshape the governance of the taxation system by:</p> <ul style="list-style-type: none">• establishing a Tax System Advisory Board (TSAB) to advise the Commissioner of Taxation and the Australian Taxation Office (ATO) Executive Committee on the strategy, direction, culture, organisation, management, compliance planning, staff profile and information technology plans at the ATO and providing a new, direct and in-built voice for business and taxpayer communities in relation to ATO decision making and culture;• empowering and reshaping the role of the Board of Taxation to initiate, in consultation with the Government, its own reviews into the operation of current tax policies and law, as well as enabling the Government to adjust the Board's membership as necessary to ensure it is correctly balanced and fully representative;• recommitting to a principle-based approach in tax law design to deliver a simple, transparent, responsive, accountable and accessible tax system, including continuing work to deliver Australia a single modern Income Tax Assessment Act; and• undertaking consultation with the Australian community on the TSAB in 2010.
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Sensitivities	<p>The design details of the TSAB will be important to ensure that it can fulfil its role as an advisory board and meet the intent that it not interfere with the independence of the Commissioner of Taxation.</p> <ul style="list-style-type: none">– It was announced that the TSAB would be a statutory body and, inter alia, that it would inform the Commissioner on compliance planning. Press reports of the measure stated that the Board would have full time members (Australian Financial Review, 6 August 2010, p1) although that does not appear in the announcement materials. We and the Commissioner are concerned that were the TSAB to be a full time body it could undermine both the independence of the Commissioner and the Board's efficacy as an advisory body intended to be drawn from members with CEO level experience in large, complex organisations.– The Commissioner of Taxation questions strongly whether there is a need for an Advisory Board for the ATO given the ATO's current robust framework of governance and consultation. The statutory nature of the TSAB will raise particular sensitivities. However, given the Government's announcement the Commissioner sees merit in further consideration of more flexible non-statutory arrangements. Accordingly, decisions on implementation should be fully informed by the views of the Commissioner.– We will provide you with further briefing around a TSAB that assists the
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Commissioner while not interfering with the Commissioner's independence.

- You will need to establish a process to ensure the integrity of TSAB members' tax behaviour and that of related entities and other potential conflicts of interest, particularly if you wish to have a statutory board.

The tax profession and industry may argue that there needs to be greater consultation about a principle-based design of the taxation law.

The Board of Taxation is concerned about changes to its structure and does not support the recommendation made in the AFTS review to shift the ex-officio appointments from members to advisers.

Next Steps

Briefing will be provided in due course, subject to your priorities, on issues around the nature and operation of an advisory body and the reshaped Board of Taxation. This briefing will also recommend a draft position paper for public release outlining the principle-based approach and its benefits.

Contact	Christine Barron Revenue Group Tax System Division	6263 4479
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Tax breaks for green buildings

Outline of issue Businesses that invest in eligible assets or capital works to improve the energy efficiency of their existing buildings will be able to apply for a one-off bonus 50 per cent tax deduction. Qualifying projects must be undertaken between 1 July 2011 and 30 June 2015.

Retrofits of office buildings, hotels and shopping centres will be eligible — that is the commercial buildings that are currently covered by the National Australian Built Environment Rating System (NABERS).

Funding for the scheme is to be capped on an annual basis.

While implementation would be the responsibility of Treasury, ongoing administration of the scheme would lie largely with the Department of Climate Change and Energy Efficiency (DCCEE).

Key Points NABERS uses evidence-based assessments requiring at least 12 months of actual energy use data.

It is not clear whether the annual funding is to be capped on a first-come-first-served or on a ranking of competing projects basis. A capped scheme will need to be carefully designed to be a valid exercise of the Commonwealth's taxation power (for which the Australian Government Solicitor's advice will be sought).

Sensitivities There will be a considerable delay between commencing the project and receiving the ultimate tax benefit because of the need to have 12 months of actual energy use data and the need to wait for the end of the income tax year to claim the tax deduction.

Commercial buildings that are not covered by NABERS would not be eligible. This means that factories and residential housing kept as investment properties would not be eligible.

Next Steps We will consult with the DCCEE and the ATO as part of briefing the Government on the implementation of this measure.

Contact **Gerry Antioch** **6263 4382**
Revenue Group
Business Tax Division

Significant transport infrastructure projects

Outline of issue	<p>Your Government has announced \$3.6 billion in funding for a number of major transport infrastructure projects including the Epping to Parramatta Rail Link, the Moreton Bay Rail Link and the Perth Airport component of the ‘Gateway WA’ initiative.</p> <p>The Government has also announced several additional major projects including the Brisbane to Melbourne Inland Rail Link and the Great Eastern Highway component of the ‘Gateway WA’ initiative.</p>
Key Points	<p>The capacity for the Government to fund infrastructure projects is limited. Therefore directing Government funds into the most beneficial projects will be important along with leveraging private sector investment.</p> <p>Infrastructure Australia (IA) is developing a number of strategic plans for transport including for ports, freight and capital cities. Involving IA in the assessment of projects for funding will allow analysis of whether projects are consistent with IA’s strategic plans and have high overall benefits.</p> <p>IA has assessed the Inland Rail Link, the Moreton Bay Rail Link and the ‘Gateway WA’ projects as having real potential. In addition, your Government has announced that it will work with IA on the Epping to Parramatta Rail Link, the Townsville Ring Road and the Peak Downs Highway.</p>
Sensitivities	<p>Your Government has announced that a number of the transport projects will be jointly funded with the relevant state government, including the Epping to Parramatta Rail Link, ‘Gateway WA’ and the Townsville Ring Road. It will be important to get the risk sharing and governance frameworks right for these projects in order to manage financial and other risks for the Commonwealth Government.</p>
Next Steps	<p>Your Government has announced that the funding for some of these election commitments will come from the Regional Infrastructure Fund. These projects total \$759 million and include the ‘Gateway WA’ initiative (just the airport component), the Townsville Ring Road and an upgrade to the Peak Downs Highway.</p> <p>Your Government will need to settle the governance framework for the Regional Infrastructure Fund.</p>
Contact	<p>Brad Archer 6263 3121 Markets Group Infrastructure, Competition and Consumer Division</p>
