

BUZZ

AON HEWITT LEGAL NEWS

In this issue:

SUPERANNUATION

- **GST input tax recovery for superannuation funds**
- **Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Bill 2012 – exposure draft**
- **Exposure draft – refunded excess concessional contributions**
- **ASIC releases guidance re superannuation forecasts**
- **Intra-fund advice**
- **MySuper – Parliamentary Joint Committee inquiry**
- **Draft ruling – deductibility of TPD premiums**
- **ASFA updates best practice papers**
- **ASFA discussion paper – data integrity**

SUPERANNUATION

GST input tax recovery for superannuation funds

Treasury has recently released the A New Tax System (Goods and Services Tax) Amendment Regulations 2012 (No.) to amend existing regulations in relation to GST input tax recovery by managed investment schemes and super funds.

The key impact on managed investment schemes and super funds is that under the new regulations they would be limited to claiming a lower level reduced input tax credit (RITC) of 55% for the GST incurred on the trustee and responsible entity services they acquire.

Currently, they can claim a RITC of 75% however the Government has considered this provides an inappropriate recovery for certain costs incurred on behalf of the Trust where they have been ‘bundled’ with other services and would not have been eligible for an RITC if acquired directly by the Trust.

Certain services will be excluded from the application of the 55% RITC set out in the regulations including certain brokerage services, investment portfolio management functions, administrative functions in relation to investment funds, custodial services and master custody services.

The Government is accepting submissions on the draft until 24 February 2012.

The exposure draft and explanatory memorandum can be accessed in full at:

<http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=2291>

In this issue:

SUPERANNUATION

- **SuperStream draft data standard - contributions**
- **Lost members register re-report**
- **Regulations passed re use of tax file numbers (TFNs)**

FINANCIAL PLANNING

- **ASIC's second phase of financial services industry survey**
- **Key points from Report 251**
- **ASIC guidance relating to FOFA**
- **ASIC releases disclosure benchmarks for infrastructure entities**
- **Shorter PDS regime**

INSURANCE

- **Update: OHS harmonisation**
- **Work Health and Safety Regulations introduced**

SEMINARS

- **February 2012 – April 2012**

Source:

A New Tax System (Goods and Services Tax) Amendment Regulations 2012 (No.) exposure draft and explanatory memorandum

ASFA Home, 'GST financial supply provisions – exposure draft', Issue 449, 23 January 2012

Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Bill 2012 – exposure draft

The exposure draft sets out the second tranche of the Stronger Super reforms including the following:

- Expanding the covenants for RSE licensees including in relation to risk management strategies and insurance strategies
- Applying new trustee duties to trustees of an RSE that offers a MySuper product
- Applying personal duties to the directors of corporate trustees in their own right
- Providing details of the power for APRA to issue prudential standards in relation to superannuation

The exposure draft and explanatory memorandum can be accessed in full at:

http://strongersuper.treasury.gov.au/content/Content.aspx?doc=exposure_drafts/trustee/default.htm

Other aspects of the reforms will be included in subsequent legislation.

Source:

Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Bill 2012 exposure draft and explanatory memorandum

Exposure draft – refunded excess concessional contributions

The Government has recently released for public submission the Tax Laws Amendment (2012 Measures 2 No. 1) Bill 2012, the purpose of which is to give effect to the Government's 2011/12 Budget measure relating to the refund of excess concessional contributions.

The key impact of the legislation is that eligible individuals will be afforded the option to have excess concessional contributions of up to \$10,000 refunded from their superannuation fund and assessed at their marginal income tax rate rather than incurring the excess contributions tax.

It will only apply in situations where an individual has made excess concessional contributions of \$10,000 (not indexed) or less and did not have excess concessional contributions for an earlier financial year commencing on or after 1 July 2011.

The exposure draft does not give the individual an opportunity to initiate the process but rather the ATO will establish a new process whereby individuals that are eligible for the refund measure are identified and offered the opportunity to have the contributions taken from the fund and treated as assessable income.

If the legislation is enacted, it will apply in relation to excess concessional contributions for the financial year beginning on 1 July 2011 and later financial years.

The Government sought public submissions until 20 January 2012.

The exposure draft and explanatory memorandum can be accessed at:
http://www.treasury.gov.au/documents/2274/PDF/Exposure_Draft.pdf and
[http://www.treasury.gov.au/documents/2274/PDF/Explanatory%20 Material.pdf](http://www.treasury.gov.au/documents/2274/PDF/Explanatory%20Material.pdf).

Source:

Exposure Draft of Tax Laws Amendment (2012 Measures No. 1) Bill 2012:
refunded excess contributions and explanatory memorandum

ASIC releases guidance re superannuation forecasts

ASIC has recently released regulatory guidance and class order relief to assist superannuation fund trustees in providing members with superannuation forecasts (both in the form of a statement or a calculator).

A superannuation forecast (referred to by ASIC as a retirement estimate) is an estimate provided to a super fund member of the balance of their superannuation benefit at retirement (taking into account their current account balance, fees, assumptions about future contributions, earnings and other factors).

Retirement estimates may involve personal advice therefore without relief trustees that provide estimates to members may need to hold an Australian Financial Services Licence with a personal advice authorisation.

Class Order CO 11/1227 grants relief to superannuation fund trustees so that they don't have to comply with the requirement to hold an Australian Financial Services Licence for any financial product advice they give in providing members with a retirement estimate in accordance with the class order. Where they already hold an Australian Financial Services Licence, the class order grants relief from the

advice, conduct and disclosure requirements for general and personal advice in the Corporations Act 2001 when they provide retirement estimates.

The recently released Regulatory Guide 229 'Superannuation forecasts', together with the class order relief, aims to assist members to engage more with their superannuation and retirement planning, and better understand their options.

Additionally, Regulatory Guide 229 explains how ASIC's existing general relief for providers of financial product calculators in Class Order CO 05/1122 applies to superannuation calculators.

To qualify for the relief, a retirement estimate must:

- Be given at the same time as the member's periodic statement and be included in or accompany the periodic statement
- Specify the member's estimated retirement benefit which has been calculated based on the required variables and default assumptions set out in RG 229
- Contain the mandatory content including regarding the purpose of the retirement estimate and how it has been calculated

RG 229 and the class orders can be accessed in full from the ASIC website:

<http://asic.gov.au/asic/asic.nsf>

Source:

ASIC, Regulatory Guide 229: Superannuation Forecasts, December 2011

ASIC, Class Order CO 11/1227

ASIC, Class Order CO 05/1122

ASIC media release 'ASIC releases guidance on superannuation forecasts', 11-282AD, 7 December 2011

Intra-fund advice

The Honourable Bill Shorten has recently released new rules relating to the provision of intra-fund advice by superannuation trustees to ensure that advice provided is in the best interests of members and that related costs are reasonable. The focus on intra-fund advice is part of a move by the Government to make advice more readily available to all Australians. In this regard, the Government has already removed some regulatory barriers by ensuring that financial services providers can provide 'scaled advice' while still meeting regulatory requirements.

Intra-fund advice is often provided as 'scaled advice' by superannuation funds to their members and the Cooper Review recommendation that intra-fund advice be collectively charged by superannuation trustees to their members has been accepted by the Government.

Intra-fund advice will be subject to key FOFA regulatory requirements, such as the best interests duty and ASIC will also release regulatory guidance on this topic.

Intra-fund advice will cover any general advice or personal advice provided within the sole-purpose test however, the following types of advice are specifically excluded:

- Advice relating to whether the member should consolidate their existing superannuation accounts
- Advice to switch from one superannuation fund into another except to the extent where the advice relates to moving the member from an accumulation product into a retirement product offered by the same registrable superannuation entity
- Advice that contains recommendations in relation to financial products that the member holds outside of superannuation
- Advice in relation to investment choice outside of the trustee-prescribed investment options.

Source:

Minister for Financial Services and Superannuation, media release 'Improving Access to Simple Financial Advice', 8 December 2011

ASFA Home, 'Intra-fund advice', Issue 445, 8 December 2011

MySuper – Parliamentary Joint Committee inquiry

Following the reference by the House of Representatives, the Parliamentary Joint Committee has been inquiring into the MySuper Core Provisions Bill, with submissions closing on 20 January 2011. Based on their inquiry, the Committee will provide a report to Parliament on 21 March 2012.

Source:

ASFA Home, 'MySuper update', Issue 444, 7 December 2011

Draft ruling – deductibility of TPD premiums

The ATO has released a draft ruling containing the Taxation Commissioner's preliminary views on the deductibility of premiums paid by a complying superannuation fund for insurance policies providing TPD cover for the fund's members.

A complying superannuation fund can claim a deduction for an insurance premium on a TPD insurance policy paid for by the fund, if there is a connection between that payment and a current or contingent liability of the fund to provide a 'disability superannuation benefit' referred to in paragraph 295-460(b) Income Tax Assessment Act 1997 to its members.

The premium paid for the TPD insurance policy may be wholly or partly in respect of the provision of 'disability superannuation benefits' which will be determined by reference to the nature and scope of the insured event(s) and whether upon the occurrence of those events there is a current or contingent obligation on the trustee to provide a disability superannuation benefit to the member in accordance with the terms of the trust deed.

The degree of certainty of the requirements of the 'disability superannuation benefit' definition being met as a consequence of an insured event occurring is critical to determining the extent to which an insurance premium paid by a complying superannuation fund for a TPD insurance policy will be deductible.

Additionally, where the TPD insurance policy has insured events referable to the provision of other benefits listed in section 295-460, it will be equally critical to determine the degree of certainty of the relevant test in section 295-460 being met as a consequence of an insured event occurring.

Once the ruling is finalised, it is proposed to apply from 1 July 2011 and subsequent income years.

The draft ruling can be viewed in full at:

<http://law.ato.gov.au/atolaw/view.htm?docid=DTR/TR2011D6/NAT/ATO/00001>

Source:

ATO, Draft Taxation Ruling 'Income tax: deductibility under subsection 295-465(1) of the Income Tax Assessment Act 1997 of premiums paid by a complying superannuation fund for an insurance policy providing Total and Permanent Disability cover in respect of its members', TR 2011/D6

ASFA updates best practice papers

ASFA has recently released three updated best practice papers on the following topics:

- Best practice paper No.1 – Insurance options for superannuation trustees and funds (revised November 2011).

This revised paper intends to assist trustees in understanding the different insurance policies that are available and in negotiating adequate and cost-effective policies. It also provides guidance on essential and desirable policy features.

- Best practice paper No.20 – Managing the risk of fraud and corruption in superannuation funds (revised November 2011).

This paper is to be read in conjunction with ASFA's best practice paper No.19 – A risk management framework for superannuation funds. It is designed to equip trustees with the necessary knowledge and skills for implementing policies and processes to manage the risk of fraud and corruption.

- Best practice paper No.26 – Setting investment policy and process (revised October 2011).

This revised paper provides guidance to trustees on developing investment management processes and generating and implementing appropriate investment strategies.

The papers can be accessed in full by ASFA members from their website:

<http://www.superannuation.asn.au/>

Source:

ASFA Home, 'Updated ASFA Best Practice Papers', Issue 444, 7 December 2011

ASFA discussion paper – data integrity

ASFA, in partnership with ITM, has produced a discussion paper about the quality and integrity of data used in superannuation fund administration.

The paper discusses the importance of good data quality and aims to highlight issues contributing to poor data quality as well as actions that could be implemented to improve data quality.

To ensure an effective approach to improving data quality, the paper considers that the industry needs to undertake the following actions:

- Educate and encourage trustees to raise their understanding and expectations of acceptable levels of data quality and related risks
- Cooperation between funds, administrators, employers and other service providers on the introduction of data integrity measures
- Trustees should introduce a benchmark to measure the data quality of core member information. Included in the paper is the ASFA-ITM Data Benchmark which provides actual data integrity benchmarking of each fund against its peers.
- There are a number of static member-related data fields that are captured for almost all superannuation
- Trustees must set annual benchmarks for record keeping that will raise standards over time
- Trustees should request administrators to report on data integrity issues
- The area of data integrity should become subject to regulatory oversight and the regulator should consider providing further guidance on materiality of data errors
- Minimum acceptable data standards from employers should be mandated and enforced
- Consideration should be given to including data integrity and data security requirements in any future regulation of administrators and trustees

The discussion paper can be accessed by ASFA members on the website:

<http://www.superannuation.asn.au/>

Source:

ASFA, discussion paper 'Data integrity and quality of superannuation data', November 2011

SuperStream draft data standard - contributions

Following the ATO's release of the draft Message Implementation Guide (MIG) relating to rollovers, they have now released the draft MIG for data standards relating to superannuation contribution transactions.

The MIG is one of the data and e-commerce standards that were agreed to be implemented as part of the Stronger Super reforms and is open for public comment until 31 January 2012.

The purpose of the MIG is to define the business interaction and message payloads for superannuation contributions for use as a standard message supporting e-commerce transactions between employers and funds.

The MIG contains the necessary information to support the development of systems and associated business processes which will enable the electronic transmission of money and data associated with:

- Member registration and update of member details to a superannuation fund
- Superannuation contributions by employers to either an accumulation or a defined benefit fund.

The use of the data standards will be phased in as follows:

- July 2013: Data standards and use of e-commerce becomes mandatory for APRA-regulated funds and self-managed superannuation funds for processing rollovers and accepting contributions (provided by employers in the new format)
- July 2014: Data standards and use of e-commerce becomes mandatory for large and medium employers making contributions
- July 2015: Proposed application of data standards and use of e-commerce to small employers, subject to further consultation on the associated impacts.

The MIG and an overview are available on the ATO website:

<http://www.ato.gov.au/content/00301976.htm>

Source:

Australian Tax Office, Exposure Draft 'SuperStream: Member Registration and Contributions Message Implementation Guide', 7 December 2011

Lost members register re-report

The ATO had recently issued a reminder to all superannuation trustees regarding their obligation to lodge with them by 30 April 2012 a Lost Members Statement for the period to 31 December 2011.

The Lost Members Statement must include all current lost and inactive members that the superannuation trustee has on its records.

Importantly, trustees must do this even if they have previously reported a member as lost or inactive.

This is a one-off requirement to improve the accuracy of the information on the Lost Members Register.

Normal reporting obligations will resume for the period ending 30 June 2012.

Source:

ATO website 'Preparing for the lost members register re-report - April 2012',
<http://www.ato.gov.au/superfunds/content.aspx?doc=/content/00302955.ht>

Regulations passed re use of tax file numbers (TFNs)

The Superannuation Industry (Supervision) Amendment Regulations 2011 (No.4) were passed in early December. The effect of the amendments is to include rules with which trustees of superannuation entities must comply when using a member's TFN to locate accounts and where they use TFNs in order to facilitate account consolidation.

The rules restrict the use of a member's TFN to situations where they have provided consent and will also impose limits on the ability of trustees to search for member's accounts.

The Regulations and an explanatory memorandum can be accessed in full at:
<http://www.comlaw.gov.au/Details/F2011L02615/Download>

The increased use of TFNs is expected to enhance administrative efficiency in the superannuation industry.

Source:

Superannuation Industry (Supervision) Amendment Regulations 2011 (No.4) and explanatory memorandum

FINANCIAL PLANNING

ASIC's second phase of financial services industry survey

Following the initial phase of their review of the financial services industry, ASIC has now circulated their survey for the second phase of the review.

Whilst the first phase covered the 20 largest Australian Financial Services licensees, the second phase targets the 30 next largest Australian Financial Services licensees.

The survey has been modified since the initial phase, and covers the following topics:

- Licensee business model
- Training of representatives
- Monitoring & supervision of representatives
- Product & strategic advice
- Complaints handling and compensation arrangements

Responses to the survey are due back to ASIC by 31 March 2012.

ASIC intends to meet with all licensees in 2012 to discuss the information received and will prepare a publicly available report based on the responses.

Source:

ASIC media release, 'ASIC begins second phase of review of financial advice industry practice', 11-284MR, 7 December 2011

Key points from Report 251

Further to the above article, ASIC made some key recommendations to licensees and advisers as a result of phase one of their review, as set out below:

- **Licensee business models**
Licensees should ensure that they effectively manage (and, where applicable, avoid) conflicts of interest in their business models. Disclosure alone will not always satisfy a licensee's obligations, and this needs constant oversight. Licensees should refer to RG 181 for more information on ASIC's expectations for dealing with conflicts of interest.
- **Training of advisers**
Licensees should continue to give training a high priority, as this lessens the risk of poor advice being provided.
- **Monitoring and supervision of advisers**
 - Licensees need to make sure that their stated procedures are fully complied with by their advisers and are constantly refined based on

assessments of audit outcomes. The consequences for failing to meet licensee standards should be clear to all parties and strictly enforced by licensees without fear or favour.

- Licensees should always conduct reference checks on their new advisers by contacting previous licensees.
- ASIC expects licensees to be active in reporting breaches and clearly demonstrate to them that they have an adequate remediation plan.
- Licensees should retain access to client records so that they can respond to client complaints or disputes and can review adviser conduct whenever they need to do so.
- **Product and strategic advice**
 - Conflicts of interest within the approved products need to be actively managed. If advisers recommend high levels of a few products, the reasons for doing so need to be explored and justified.
 - When considering what strategies to recommend to clients, licensees and advisers should educate clients about risk and return.
- **Complaints handling and compensation**
 - ASIC expects licensees to invest significant time, funding and resources, including senior management support, into ensuring they handle complaints well.
 - ASIC expects licensees to carefully consider the terms of their PI insurance policy, including any exclusions for risky products or services, and ensure that they can demonstrate they are able to compensate clients for potential losses that may occur anywhere in their business operations.

Report 251 can be accessed in full at:

[https://westpoint.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rep251-published-13-September-2011.pdf/\\$file/rep251-published-13-September-2011.pdf](https://westpoint.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rep251-published-13-September-2011.pdf/$file/rep251-published-13-September-2011.pdf)

Source:

ASIC, Report 251 'Review of financial advice industry practice', September 2011

ASIC guidance relating to FOFA

ASIC has advised that, assuming the FOFA reforms are enacted by 1 July 2012, they will be releasing regulatory guidance on the impact of the reforms before this date.

More specifically, they intend to publish guidance on the following:

- ASIC's expectations for meeting the best interests duty
- Scaled advice
- The practical operation of the ban on conflicted remuneration and how ASIC will administer it
- ASIC's expanded powers relating to cancelling / suspending a licence and banning representatives (ASIC will reissue existing Regulatory Guide 98 Licensing: Administrative action against financial services providers)

Source:

ASIC media release, 'ASIC's plans for FoFA reforms', 11-294AD, 13 December 2011

ASIC releases disclosure benchmarks for infrastructure entities

ASIC has released Regulatory Guide 231 containing new disclosure benchmarks and principles for infrastructure entities. The aim of the guide is to improve investor awareness of the risks associated with investing in infrastructure products.

The guide contains nine benchmarks and eleven disclosure principles that apply to infrastructure entities who must disclose whether they meet the benchmarks and if not, why not.

Infrastructure entities need to disclose whether they meet the following nine benchmarks:

- Whether the infrastructure entity's corporate governance policies and practices conform with ASX Listing Rules
- Whether incentive-based remuneration paid to management is derived from the infrastructure entity's performance
- Whether all units or shares of the infrastructure entity are fully paid and have the same rights
- Whether the infrastructure entity has complied with ASX Listing Rule 10.1 for substantial related party transactions
- Whether the infrastructure entity has prepared and had approved by its directors certain cash flow forecasts
- Whether an agreed-upon procedures check has been performed on the infrastructure entity's base-case financial model and whether there are any

findings that would be materially relevant to the infrastructure entity's investment decision

- Regarding operating assets whether performance for the first two years of operation equals or exceeds the original disclosed forecasts
- Regarding infrastructure entities that are unit trusts whether distributions will be paid from scheme borrowings
- Regarding unlisted infrastructure entities that are unit trusts whether the infrastructure entity has, after valuations, reviewed and updated the unit price before issuing new units or redeeming units

The eleven principles that infrastructure entities must provide disclosure on are as follows:

- Key relationships (e.g. controlling arrangements)
- Management fees and performance fees
- Related party transactions
- Financial ratios
- Capital expenditure and debt maturities
- Foreign exchange and interest rate hedging
- Base-case financial model
- Valuations
- Distribution policy
- Withdrawal policy
- Portfolio diversification policy

Further details are contained in RG 231 which can be accessed in full at:

[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg231-published-24January2012.pdf/\\$file/rg231-published-24January2012.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg231-published-24January2012.pdf/$file/rg231-published-24January2012.pdf)

Source:

ASIC Regulatory Guide 231 – Infrastructure entities: Improving disclosure for retail investors, January 2012

ASIC media release, 'ASIC improves disclosure by infrastructure entities', 24 January 2012

Shorter PDS regime

The Corporations Legislation Amendment Regulations 2011 (No.2) were finalised and registered on 9 December 2011. These regulations give effect to the shorter PDS regime which will take effect from 22 June 2012 and aims to ensure that disclosure for certain financial products is presented in a short and simple way.

The Government will continue to consult with industry and consumer groups to address the need to transition to the new regulations and to determine whether superannuation platforms and multifunds should be excluded from the regime.

As an interim measure, the Minister for Financial Services and Superannuation has advised that superannuation platforms and multifunds will be excluded, however relief will be provided by ASIC so that they can, at the discretion of the provider, be included in the regime.

The Minister also reiterated that particularly complex products, such as hedge funds will remain excluded until they can be fully considered in line with the policy intent of the regime.

The regulations and explanatory statement can be accessed at:

<http://www.comlaw.gov.au/Details/F2011L02616/Download>

Source:

The Corporations Legislation Amendment Regulations 2011 (No.2) and explanatory statement

Minister for Financial Services and Superannuation, media release No. 169 'Shorter Product Disclosure Statements', 22 December 2011

INSURANCE

Update: OHS harmonisation

The Work Health and Safety Bill was passed by the Commonwealth Government on 24 November 2011 and harmonised OHS laws have been passed in Queensland, New South Wales, the Australian Capital Territory and Northern Territory.

Additionally, Bills are before the South Australian and Tasmanian Parliaments however Victoria and Western Australia have not yet introduced the harmonisation laws to their Parliaments.

On 2 December 2011, the Tasmanian Legislative Council amended the start date of the Work Health and Safety Bill 2011 to 1 January 2013. The Bill will be returned to the House of Assembly for consideration of the change when Parliament resumes in March 2012.

Source:

Safe Work Australia website, 'Model WHS legislation', safeworkaustralia.gov.au

Work Health and Safety Regulations introduced

The Government has introduced the Work Health and Safety Regulations 2011 as part of the nationally harmonised occupational health and safety (OHS) laws. They will apply to the Commonwealth, public authorities and for a transitional period, non-Commonwealth licensees.

They form part of the model laws (together with the Work Health and Safety Act 2011) agreed to by all Australian jurisdictions through the signing of the Inter-Governmental Agreement for Regulatory and Operational Reform in OHS.

The intention of the model laws is to protect the safety of workers, reduce compliance expenses for business and government and result in improved efficiency for regulators.

The Regulations and an explanatory note can be accessed in full at:

<http://www.comlaw.gov.au/Details/F2011L02664>

Source:

Work Health and Safety Regulations 2011 and Explanatory Statement

SEMINARS

February – April 2012

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.

February 14

ANZIIF SA, ANZIIF AILA General Insurance law Annual Review
Adelaide Go to <http://www.theinstitute.com.au>

February 23

ANZIIF QLD, ANZIIF AILA General Insurance law Annual Review
Brisbane Go to <http://www.theinstitute.com.au>

February 27

FPA, Live Webinar, 2012 SMFS Essentials
Go to <https://members.fpa.asn.au/>

March 6

ANZIIF VIC, Introduction to General Insurance Workshop
Melbourne Go to <http://www.theinstitute.com.au>

March 16

ASFA NSW, ASFA Investment Interchange
Sydney Go to <http://www.superannuation.asn.au/>

March 22

ANZIIF NSW, Industrial Special risk Insurance Masterclass
Sydney Go to <http://www.theinstitute.com.au>

April 3

ANZIIF NSW, Introduction to General Insurance Workshop
Sydney Go to <http://www.theinstitute.com.au>

April 10

ANZIIF VIC, Industrial Special risk Insurance Masterclass
Melbourne Go to <http://www.theinstitute.com.au>

April 17

ANZIIF WA, Industrial Special risk Insurance Masterclass

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

April 27

FPA, Live Webinar, FOFA in Practice – Your Implementation Guide

Go to <https://members.fpa.asn.au/>

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