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Super System Review
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ASFA Submission – Super System Review – ‘Self-Managed Super Solutions’ preliminary report

The Association of Superannuation Funds of Australia is pleased to provide this submission in response to the Self-Managed Super Solutions preliminary report released by the Review by the Australian Government into the Governance, Efficiency, Structure and Operation of Australia’s Superannuation System (the Panel).

ASFA is a non-profit, non-political national organisation whose mission is to advance effective retirement outcomes for members of superannuation funds through research and advocacy. We focus on the issues that affect the entire superannuation industry. Our membership, which includes corporate, public sector, industry and retail superannuation funds as well service providers some of whom deal with self managed superannuation funds (SMSFs) has as members over 90% of the approximately 12 million Australians with superannuation.

Our Constitution requires that we promote and protect the interests of superannuation funds, their trustees and their members. As such we conduct extensive research, engage our membership in debate and offer what we believe is sound public policy which rises above vested interests.

1. General comments on the Self-Managed Super Solutions report

On 29th April 2010, the Panel released their Phase Three – Preliminary Report entitled “Self-Managed Super Solutions” (the report).

ASFA generally supports the majority of recommendations contained in the report. ASFA sees implementation of the report as an opportunity to improve the regulatory regime around SMSFs.

1.1 ASFA’s long standing SMSF position

ASFA has noted that parts of the Panel’s report are consistent with a number of ASFA’s advocated positions. ASFA is pleased that the Panel has adopted the following:

- o no change to the existing membership limit,
- o no mandating of minimum SMSF asset size,
- o support for compulsory education for those SMSF trustees who breach their responsibilities,
- o implementation of a sliding scale of administrative penalties,
- o a better dispute resolution process, in this case the broadening of the Superannuation Complaints Tribunal role to include certain SMSF trustee disputes,

- providing the Australian Taxation Office (ATO) with the power to issue binding rulings in relation to SMSFs,
- that approved auditors be registered,
- that the borrowing provisions introduced in 2007 undergo review – ASFA acknowledges that draft legislation is currently before the Parliament covering certain limited recourse borrowing arrangements,
- mandating the use of market value for asset valuations,
- improving the integrity of the system through and better member identification processes,
- establishment of a naming convention for SMSFs that prevents a name that is the same or similar to an APRA regulated fund,
- enhancement of the ATO Super Fund Lookup website so as to provide more appropriate SMSF information to APRA regulated funds; and
- that rollovers to SMSFs be captured as a designated service under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF)

ASFA also applauds the Government's response to the Parliamentary Joint Committee on Corporations and Financial Services' *Inquiry into financial product and services in Australia* (the Ripoll Inquiry). Amongst the many reforms announced, the removal of the Australian Financial Services License (AFSL) exemption provided to accountants under Regulation 7.1.29 of the Corporations Regulations is reflective of a long standing ASFA position. This change was also recommended in ASFA's Cooper Phase Three response.

2. Specific comments on the Self-Managed Super Solutions report

Notwithstanding ASFA's general support for the preliminary recommendations of the Panel, ASFA wishes to raise the following observations regarding specific sections of the report.

2.1 Superannuation Complainants Tribunal (SCT)

The Panel recommended that the jurisdiction of the SCT be extended to resolve death benefit disputes between an SMSF and a beneficiary who is not a member or a person in their capacity as the legal personal representative of a deceased member, and to resolve disputes involving external insurance. ASFA supports this recommendation.

ASFA recommends that the funding model to support this initiative be subject to further industry consultation. Any levy imposed on over 400,000 entities has the potential to raise significant revenue. Any levy must reflect the actual cost that may be incurred by the SCT in hearing the SMSF disputes as described above. One view is that only a small number of such cases would come before the SCT, therefore making it difficult to justify levying the entire segment for such a cost. Another option is for a user pays system to be instituted where the cost is met by the fund itself with the SCT having the power to award costs against a person making a vexatious claim.

2.2 Registration and competence of SMSF auditors

ASFA supports the Panel's recommendation to establish a registration body for approved SMSF auditors. ASFA notes that the proposed body will also be responsible for determining the qualifications (including professional body memberships) that may be required for eligibility as well being able to set competency standards and develop a penalty regime.

ASFA in the past has supported the work of the main professional accounting bodies in publishing competency standards for their members who wish to audit SMSFs. ASFA recommends that this work be leveraged accordingly when the Panel considers its final recommendations on competency standards for SMSF auditors.

ASFA also recommends significant industry consultation be undertaken on this matter so that sufficient guidance can be provided to SMSF auditors and trustees.

2.3 Independence of SMSF auditors

The independence of the SMSF auditor is widely recognised as a critical characteristic of the audit process and has been an often repeated area of concern raised by the ATO. The Panel proposes to legislate full audit independence in relation to SMSFs to the extent that the auditor or auditing firm must have no connection to services or advice provided to the individual member/trustee or their family businesses i.e. the proposed model extends wider than the SMSF itself.

ASFA appreciates that the features of SMSFs and their regulation are unique and more than likely have no equivalent either in Australia or overseas. The Panel report also acknowledges that the proposed model requires SMSF auditors to abide by standards that exceed those imposed on other auditors by international auditing standards and practice – see Accounting Professional and Ethical Standard 110 issued by the Accounting Professional & Ethical Standards Board (APESB) and the Australian Auditing Standards Board (AuASB) new quality control standard ASQC1 and guidance standard for auditing SMSFs GS 009.

The requirement to have completely independent firms for audit and other services will lead to significant additional cost and complexity. This particularly will be the case for clients of larger financial service firms who, although capable of performing both tasks independently and in compliance with current standards, will now need to rely on external firms to do either the financials or the audit.

ASFA is of the view that the auditor model applying to the audit of compliance plans for managed investment schemes under Chapter 5C of the *Corporations Act 2001* (the Corps Act) may provide an alternative model. Under that model the person conducting the financial audit and the person auditing the compliance plan, must not be the same person, but that being said, the two people can be partners in the same accounting firm.

In the case of SMSFs, it would be appropriate to require the person conducting the SMSF audit (both the financial and compliance parts of the audit) to not be the same person providing other services to the SMSF members or their associates (as defined by Part 8 of the *Superannuation Industry (Supervision) Act 1993*). Nevertheless, two people should be able to be partners in the same accounting firm.

ASFA recommends that there be significant industry consultation on this matter. In addition, ASFA recommends that consultation with the Australian Government, Financial Reporting Council (FRC) occurs as the RFC is responsible for providing broad oversight of the process for setting auditing standards as well as monitoring the effectiveness of auditor independence requirements in Australia.

2.4 Collectibles and personal use assets

ASFA has consistently argued against any mandatory restrictions being imposed on a superannuation funds' ability to invest in assets that the trustee believes to be appropriate. In relation to the Panel's recommendation to prohibit an SMSF trustee from acquiring collectibles or "personal use" assets, ASFA has the following comments;

- The SMSF Statistical Summary published by the Cooper Review in December 2009 shows the value of "Artwork, collectibles, metals and jewels" as representing 0.1% of all SMSF assets¹.
- The practical reality is that very few SMSFs hold these types of investments and ASFA's SMSF membership (service providers) reports that those who do invest in these assets,

¹ Table 18 2008 SMSF asset allocation, page 27 Australia's Superannuation System Review - A Statistical Summary of Self-Managed Superannuation Funds 10 December 2009

normally have a level of expertise and experience that is appropriate to this particular investment category.

- This relatively small proportion of SMSFs with investments in collectibles means that this should not be a major issue. In fact the report acknowledges this issue as not being a core one. Whether these types of investments are banned and that ban is supported by either a transitional period to dispose or a grandfathering provision going forward allowing existing investments to be maintained is more or less moot.

ASFA would prefer to see all super funds, including SMSFs, being able to invest in assets that the trustees believe to be appropriate to the provision of retirement benefits. Nevertheless, ASFA recommends that if the Panel wishes to ban collectibles in SMSFs that a grandfathering provision also be made available to those SMSFs that have invested in collectibles allowing them to continue, but not increase, their current investment in these assets.

2.5 SMSF Registration – member identification

ASFA fully supports the concepts associated with improving the integrity of the system through better SMSF member identification at the point of registration. The Panel's recommendation that proof of identity checks be required for all people joining an SMSF, whether they are establishing a new fund or joining an existing fund has merit. Still, the recommendation fails to make it clear exactly who would be responsible for receiving and evaluating the identity checks.

ASFA recommends that further guidance be provided on this recommendation and further industry consultation takes place on this issue.

2.6 Acquisition and disposal of assets from related parties and asset valuations

The Panel believes that off market transfers of assets between related parties to the SMSF are riskier and more open to abuse than non-related party transactions. Subsequently the Panel has recommended acquisitions and disposals between related parties be conducted through an existing market for that asset or where no market exists the transaction must be supported by a current independent valuation from a registered valuer.

Further to this the Panel recommended that SMSFs value their assets at net market value.

ASFA is supportive of both these recommendations. However, ASFA also recommends further industry consultation to facilitate the publishing of guidelines around both recommendations.

2.7 Early release of benefits due to financial hardship –

An issue not canvassed in the Panel's report was the early release of benefits due to financial hardship. Presently, a member of a superannuation fund can be granted early release of their benefits if experiencing severe financial hardship. To be granted an early release under this ground, the member must:

- be in receipt of a Commonwealth income support payment, and have been so continuously for the 26 weeks; and
- satisfy the trustee that they are unable to meet reasonable and immediate family living expenses.

Where these requirements are met, the trustee may release an amount of upto \$10,000 in any twelve month period.

In the case of SMSFs the member seeking early release and the trustee are one and the same. Although not seen as an integrity issue, any process that has the applicant and the decision maker as the same person is flawed.

ASFA believes that any early release request from an SMSF on the grounds of financial hardship needs to be considered by an independent third party. A crucial piece of evidence needed to

facilitate early release for hardship, is the documented proof of continuous income payment support from CentreLink.

Subject to appropriate consultation ASFA recommends that CentreLink or some other independent body be empowered to be the approving authority for early release requests from SMSFs under financial hardship grounds.

3. Conclusion

Overall, ASFA is supportive of the core themes outlined by the Panel in the Self-Managed Super Solutions proposals, particularly in relation to ensuring the integrity of the superannuation system through a more robust SMSF registration process and the formalisation of competency standards for approved auditors.

ASFA stands ready to partake in industry discussion and consultation that will now be necessary to further develop the implementation mechanisms for the initiatives raised in the Panel's report.

I trust that the information contained in this submission is of value. We would be pleased to meet with you to discuss our submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Graus', written in a cursive style.

David Graus
General Manager, Policy & Industry Practice