



CAVENDISH

25 May 2007

Chairman
Parliamentary Joint Committee on Corporations and Financial Services
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senator Chapman

Inquiry into the structure and operation of the superannuation industry

Thank you for taking the time to discuss matters of interest with us and allowing us to provide you with this submission based on those issues. Our issues are predominantly related to the sub heading of "The reasons for the growth in Self Managed Funds" but are more based on the impact that the growth in Self Managed Funds is having on the wider community.

Cavendish Superannuation Pty Ltd is a leading administrator of Self Managed Superannuation Funds (SMSFs) and Small APRA Funds (SAFs) based in South Australia and we work very closely with Thomson Playford, South Australia's leading Superannuation legal practitioners.

The key issues we highlight for the Committee are:

- Residency Status of SMSFs and their members
- Burden of existing regulatory requirements on SAF's
- Ageing Population and its effect on SMSF Industry
- ATO & APRA's shared view on the ability to make in-specie pension payments

Residency Status of Self Managed Super Funds and their members

Currently the law is restrictive on members/trustees who reside overseas for periods in excess of two years. Effectively once this two year period lapses the Fund may be non-complying albeit the investments are being administered in Australia and the regulatory returns are being prepared and lodged in Australia. To resolve this issue the Trustees of the Fund must either:

1. Appoint a resident individual trustee or director if the Fund has a corporate trustee and delegate trustee power to that individual. For Funds with more than one member this new trustee must also become a member of the Fund; or
2. appoint a Legal Personal Representative with an Enduring Power of Attorney over the member as Trustee of the Fund for their period of absence (Sec 17A(3)(b) SIS Act)
3. Transfer the Fund to a SAF with and approved trustee
4. Wind up the existing SMSF and transfer the members benefits to a Public Offer, Master Trust or Retail Superannuation Fund

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Option 4 is the least desired outcome as winding up the Fund will potentially raise a Capital Gains Tax liability on the sale of assets thereby reducing a member's retirement income benefit. Similarly the investment strategy of the Fund may include property which is not necessarily an easily liquidated investment. Further these types of non-standard investments allowable under the Superannuation Industry (Supervision) Act 1993 (SISA) may not be an acceptable investment in anything other than an SMSF due to trustee restrictions.

Whilst options 1,2 & 3 provide a solution for non-contributing members, a non-resident member may jeopardise the Funds complying status if they make contributions during their period of non-residency. This is in reference to the active member test for an Australian Superannuation Fund that requires a resident active member's accumulated benefit to be greater than 50% of the total accumulated benefits for all active members.

The inability in most instances for a member to contribute to their SMSF whilst overseas is certainly restrictive. The introduction of contribution caps and the existing preservation rules provide a certain level of integrity that would allow for the removal of the active member test. This would also reduce the need for individuals to maintain more than one superannuation fund account and would minimise fees which are both elements of the Government and Opposition's position to streamline and consolidate Superannuation benefits.

As it is already a requirement under the new law for the tax liability to be released by the Superannuation Fund if the non-concessional contribution cap has been exceeded, the Regulator could raise the assessment directly against the Fund as was required under the Superannuation Surcharge. Based on the information provided in the Superannuation Fund Regulatory Return the Regulator will have sufficient information to determine whether the members are resident or not, therefore whether to issue the assessment to the individual or directly to the Fund.

Burden of existing regulatory requirements on SAF's & Ageing Population and its effect on SMSF Industry

These two matters have been combined as they lead into each other. Unlike SMSF's, SAFs whilst still only able to accept up to four (4) members have an approved Trustee and are regulated by APRA rather than the ATO. It appears to us as administrators that the regulatory reporting requirements imposed on these Trustees are onerous to the point where existing APRA approved SAF Trustees are considering winding up their operations or limiting the number of new Funds they accept due to the zealous approach taken by APRA. These requirements make it more likely for a member who is no longer able to act as trustee of their own self managed fund to look outside the realms of a Small Superannuation Fund and may restrict their investment opportunities by doing so.

As life expectancy and the number of SMSF's increase we will reach a point in time where we have existing Trustees in their nineties and even beyond and there is an increasing likelihood that these Trustees who have potentially been running their Funds for upwards of 50 years may not be in a physical or mental state to continue to do so. There needs to be mechanism whereby these Trustees hand over the management and control of their fund to a party willing and able to assume the Trustee responsibilities. Under the current regime it is unlikely that any approved Trustee will continue to act in such a capacity unless a reduced reporting obligation is placed upon them.

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To create a regulatory regime that allows members to appoint a third party to act as Trustee of their Fund without having the current reporting burden thrust upon them will ensure the longevity of the existing system. It also allows the ATO to regulate all funds with less than 5 members regardless whether the members are Trustees or an approved Trustee is appointed. The ATO already obtain all of the necessary information from the annual regulatory report which was adapted from the old APRA regulatory report.

An individual whether residing overseas or unable to act as trustee, as determined by SISA, still has the same right to invest and manage their superannuation benefits as any other individual but the current system imposes burdensome regulatory requirements on those that act on their behalf.

In-specie Pension Payments

Currently both APRA and the ATO allow a member to take a lump sum payment from their Superannuation Fund in the form of an in-specie transfer of assets held by the Fund however this allowance does not extend to the payment of a pension. Both regulators require pension payments to be made in cash. To differentiate between a lump sum and pension payment is unnecessary as a member can take lump sum withdrawals as regularly as pension payments that in accordance with SISA are only required to be paid annually. The line between lump sum and pension is now even more blurred with the removal of maximum payment requirement for account based pensions, excluding Market Linked Pensions. A member does have to elect whether a payment is a Superannuation Lump Sum payment once they have commenced a pension however they also have the ability to pay their entire member balance as a pension payment so this practice is illogical.

We recommend that this definition be clarified to allow members to pay a pension or a lump sum either in cash or in kind.

Thank you for the opportunity to raise these issues with you and please do not hesitate to contact myself, Tim Miller on (08) 8216 4235 should you wish to discuss any of this further.

Yours sincerely



Tim Miller
Technical Services Manager