



Superannuation Update – Cooper Review April 2010



The Preliminary Report from the Cooper Review regarding SMSFs has confirmed the panel view that “SMSFs should focus on the main game: retirement”

Preliminary Report on SMSFs

- Requiring that fund trustees complete an on-line education program before setting up a fund;
- The panel was against instituting a minimum fund account balance required to establish an SMSF, as well as concluding no necessity for a compulsory education requirement for trustees.

The preliminary report provides several recommendations with respect to SMSFs, with the major theme being that the vast majority of SMSFs are being managed for the retirement of members, and that they are becoming an increasingly important part of the superannuation sector.

Following on from our newsletter in December 2009 and the identification of some of the areas of concern to be considered by the Cooper Review panel, some of their preliminary recommendations regarding SMSFs are as follows:

SMSF Barriers to Entry

The panel would like to ensure that SMSFs are being established for the right reasons, and have tabled the following options in this regard:

- Requiring that a licensed adviser provide advice with respect to the appropriateness of an SMSF prior to establishment. This ‘gatekeeper role’ may only be required if the initial fund balance is to be less than \$500,000;

SMSF Investments

One of the main concerns of the panel was that SMSF monies were being used to invest and transact with related parties, as well as invest in exotic investments. Such actions may be contrary to the primary retirement objectives of the fund. The panel therefore recommends the following:

- SMSFs should be prohibited from transacting with related parties, with some exemptions such as business real property and listed shares, provided all transactions were at market value;
- Funds should continue to be able to borrow to invest, however the borrowing should not be a core focus of the fund. The panel has proposed that this be reviewed in two years time;
- Funds should be prohibited from owning any in-house assets, with a transitional period up until 2020 for the fund to dispose of any existing in-house assets (with exceptions, such as business real property);
- SMSFs should be prohibited from owning any exotic investments, including artwork, jewellery, antiques, wine, vintage cars etc;

- The panel was against being prescriptive with respect to the investment strategy for the fund.

SMSF Compliance

The panel supports the current compliance arrangements with respect to SMSFs, although they did table the following recommendations:

- That SMSFs continue to be audited every year, and that the SMSF auditor be completely independent from the fund as well as the members other affairs;
- That legislation be amended to ensure that SMSFs recognise assets at market value, with guidelines to be developed to ensure consistency;
- To reduce the administrative burden on SMSFs with respect to written correspondence required between the member and the trustee. Relevant paperwork would still be required to reflect the ultimate decision made and any relevant details;
- That in the member statement SMSF members receive certain information with respect to their benefit each year, including details of any insurance cover, death benefit nominations, pensions in place, investment returns etc;
- That the legislation be amended to reduce the need for trust deed upgrades when laws change;
- To amend the superannuation legislation to separate out those areas that are relevant to particular superannuation sectors, such as SMSFs

Other

The panel has also tabled the following additional recommendations / suggestions:

- That the number of members of a fund remain at a maximum of four, with any increase in this potentially adding to the cost or administrative burden for a fund;
- To increase the competency standards for SMSF advisers to ensure they are adequately experienced and knowledgeable to provide advice in this complex area.

- That the ATO have more powers / flexibility with respect to imposing penalties on SMSF trustees when they breach the superannuation legislation;

Our Views

The final review is not due out until 30 June 2010, at which point the Government will be required to ascertain which recommendations to implement. Our view on the preliminary report is as follows:

- The proposed restrictions on transacting with related parties is consistent with current legislation and accordingly should not adversely impact many SMSFs;
- The continued ability for funds to borrow is a positive outcome;
- Under the current rules funds are restricted to 5% of the value of their assets to be held in in-house assets, and accordingly a complete prohibition on in-house assets leading up to 2020 would not impose too much of a burden on those funds to comply;
- Increasing the number of fund members to encompass a "family superannuation fund" would be preferable, however any increased cost and trustee requirements would need to be considered in detail;
- SMSFs are a complex structure that requires specialised advice, and accordingly the increase in the competency standards for advisers is necessary to ensure the integrity of these structures in the long term. We have always recognised the specialised nature of SMSF advice, which is why all of our staff practicing in this area are SMSF Specialist Advisers (SSA®)

The Next Step

As this is only a preliminary report from the Cooper Review Panel on SMSFs, we await the final report to be delivered to the Government on 30 June 2010. From this final report and the Government's subsequent response we will be in a better position to ascertain any actual impact for SMSFs. We will keep you up to date on any developments as they come to hand.

If you have any queries, or would like advice in relation to any matters relating to any of the above, please contact either Jemma Sanderson, Michelle Saunders or Marissa Bechta on (08) 6311 6900.

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