



STRONGER SUPER

Attachment

Government Response to the Review into the Governance, Efficiency, Structure and Operation of Australia's Superannuation System

Chapter 8: Self-managed super solutions

Recommendation 8.1

The current membership limit of four members for a SMSF should not be increased.

Government response

Support.

The Government agrees that the current membership limit of four members for a self managed superannuation fund (SMSF) is appropriate.

Recommendation 8.2

Legislation should be passed to provide the ATO with the power to issue administrative penalties against SMSF trustees on a sliding scale reflecting the seriousness of the breach. The penalties should not be payable from the corpus of the fund, and may be applied jointly or severally against the trustees or trustee directors.

Government response

Support.

The Government agrees with this recommendation and will consult with relevant stakeholders on the design of the scale of penalties.

Recommendation 8.3

SIS legislation should be amended to provide the ATO with the power to issue relevant persons with a direction to rectify specified contraventions within a specified reasonable time. A breach of a direction should be a strict liability offence.

Government response

Support

The Government agrees with this recommendation and will consult with relevant stakeholders on its implementation.

Recommendation 8.4

The ATO should be given the power to enforce mandatory education for trustees who have contravened SIS legislation. Such education should be provided by a body (which could include commercial providers) approved by the regulator and would be at the cost of the trustees and not the corpus of the fund.

Government response

Support

The Government agrees with this recommendation and will consult with relevant stakeholders on its implementation.

Recommendation 8.5

The ATO should be given the power to issue binding rulings in relation to SMSFs, subject to the implementation of the Panel's recommendation to restructure the SIS Act in chapter 10 of this report.

Government response

Do not support

The Government does not agree with this recommendation. Binding rulings could result in an SMSF being permitted to maintain an investment that is contrary to retirement income policy. This recommendation could also lead to inconsistencies in regulatory approach in circumstances where the same legislative provisions are administered by both the Australian Taxation Office (ATO) and APRA. The ATO does, and would continue, to provide non-binding advice to SMSFs.

Recommendation 8.6

The Government should task ASIC, in consultation with industry and the 'expert advisory panel', to develop the SMSF specialist knowledge component of RG 146, which would focus on increased knowledge and competency with respect to the SIS Act.

Government response

Support

The Government agrees with this recommendation. ASIC will consult with relevant stakeholders and the *Future of Financial Advice* expert advisory panel on its implementation.

Recommendation 8.7

Government should legislate to require advisers to hold an AFSL where they provide advice in relation to the establishment of an SMSF. The accountants' licence exemption should not be replaced by any new exemption or restricted licensing framework.

Government response

Noted

The Government agrees that the accountants' Australian financial services licence (AFSL) exemption should be removed, and is currently consulting with industry on an appropriate alternative to the exemption as part of the *Future of Financial Advice* process, including a restricted licensing framework.

Recommendation 8.8

Government should:

- a. appoint ASIC as the registration body for approved auditors and give ASIC the power to determine the qualifications (including professional body memberships as appropriate) required for eligibility to be registered, set competency standards, develop and apply a penalty regime including the ability to deregister approved auditors. The registration requirements for approved auditors should be linked to minimum ongoing competency and knowledge standard; and
- b. task the ATO to police the approved auditor standards and enable information to be appropriately shared between ASIC and ATO so as to carry out their roles effectively.

Government response

Support

The Government agrees with this recommendation and will consult with relevant stakeholders on its design and implementation including consideration of existing professional competency and knowledge standards.

Recommendation 8.9

Subject to the Government implementing recommendation 8.8, ASIC should develop approved auditor independence standards, which auditors must meet as part of their ongoing registration requirements, as outlined in recommendation 8.8.

Government response

Support

The Government agrees with this recommendation. However, ASIC in consultation with relevant stakeholders will determine whether there are existing standards that can be used and will develop new approved auditor independence standards if necessary.

Recommendation 8.10

The 2007 relaxation of the borrowing provisions and the consumer protection measures that have recently been announced should be reviewed by government in two years' time to ensure that borrowing has not become, and does not look like becoming, a significant focus of superannuation funds.

Government response

Support

The Government agrees with this recommendation. However, a broader review of leverage will be undertaken that includes all superannuation funds across the industry. Leverage poses a risk to superannuation fund assets in both SMSFs and APRA-regulated funds because it can magnify investment losses and reduce liquidity. The review will enable consideration of whether borrowing by superannuation funds has become excessive, placing fund assets at risk, and whether such investments should be permitted to continue.

Recommendation 8.11

Legislation should be passed to require credit providers to collect and provide relevant data to APRA that would enable the RBA to publish statistics on the level of finance being provided to superannuation funds.

Government response

Do not support

The Government does not agree with this recommendation because it would not accurately capture the level of finance being provided to SMSFs and would, therefore, be of limited use. The Government will task the ATO to collect data on SMSF borrowing directly from SMSFs through implementation of recommendation 8.15.

Recommendation 8.12

SIS legislation, in relation to SMSFs, should be amended so that:

- a. the 5 per cent IHA investment limit be removed so that no IHA investments would be allowed;
- b. SMSFs with existing IHA investments be provided a five year transitional period, in which to convert to a SAF or, alternatively, dispose of their IHA investments. No acquisitions of IHA investments would be permissible during the transitional period; and

c. APRA-regulated funds be exempt from these changes.

Government response

Do not support

The Government does not agree with this recommendation because it would too severely restrict investment choice for SMSF trustees. There is no evidence that in-house asset investments within the current legislative restrictions are detrimental to SMSFs.

Recommendation 8.13

SIS legislation relating to acquisitions and disposals between related parties in SMSFs (but not APRA-regulated funds) should be amended so that, either:

- a. where an underlying market exists, all acquisitions and disposal of assets between SMSFs and related parties must be conducted through that market; or
- b. where an underlying market does not exist, acquisitions or disposals of assets between related parties must be supported by a valuation from a suitably qualified independent valuer.

Government response

Support in principle

The Government agrees in principle with this recommendation and will consult with relevant stakeholders on its design and implementation.

Recommendation 8.14

SIS legislation, in relation to SMSFs, should be amended so that:

- a. the acquisition of collectables and personal use assets by SMSF trustees be prohibited;
- b. SMSFs that own collectables or personal use assets be provided a five year transitional period, in which to convert to a SAF or, alternatively, dispose of those assets. No acquisitions of collectables and personal use assets would be permissible during the transitional period; and
- c. APRA-regulated funds be exempted from these changes.

Government response

Do not support

The Government does not agree with this recommendation because it would restrict investment choice for SMSF trustees. Consistent with its election commitment the Government will introduce legislation to tighten, from 1 July 2011, the legislative standards on SMSF investment in collectables and personal use assets to ensure that such investments do not give rise to current day benefits for SMSF members. Any existing SMSF holdings of collectables and personal use assets that cannot comply with the legislative standards will be required to be disposed of by 1 July 2016. Subject to consideration of recommendation 8.2, contravention of the legislative standards will be a strict liability offence.

Recommendation 8.15

Government should provide the ATO with a specific mandate to collect and produce SMSF statistics, the details of which be developed in consultation with industry, which provide greater understanding of the SMSF sector and its performance.

Government response

Support

The Government agrees with this recommendation and will consult with relevant stakeholders on its design and implementation. The Government notes that implementation of this recommendation will include the collection of data on SMSF borrowing, as indicated in the response to recommendation 8.11.

Recommendation 8.16

The Government should legislate to require SMSFs to value their assets at net market value.

Government response

Support

The Government agrees with this recommendation and will consult with relevant stakeholders on its implementation.

Recommendation 8.17

The ATO, in consultation with industry, should publish valuation guidelines to ensure consistent and standardised valuation practices.

Government response

Support

The Government agrees with this recommendation and the ATO will consult with relevant stakeholders on draft valuation guidelines.

Recommendation 8.18

Government, after appropriate industry consultation, should amend the Corporations Act to ensure SMSF trustees provide all SMSF members with certain key information on an annual basis.

Government response

Do not support

The Government does not agree with this recommendation. All SMSF members are also trustees and are able to access key information regarding the SMSF as they require. This recommendation would place an unnecessary administrative burden and cost on SMSFs.

Recommendation 8.19

Government, after appropriate industry consultation, should amend legislation to remove SMSF trustee administrative burdens that are identified as unnecessary.

Government response

Support

The Government agrees with this recommendation and will consult with relevant stakeholders to determine any administrative requirements which are unnecessary for SMSF trustees.

Recommendation 8.20

Government should legislate so that:

- a. proof of identity checks be required for all people joining an SMSF, whether they are establishing a new fund or joining an existing fund; and
- b. identification measures should not apply retrospectively except for existing SMSFs wishing to organise rollovers from a large APRA fund.

Government response

Support

The Government agrees with this recommendation. The Government notes that the Review recommends that proof of identity checks be conducted when opening the SMSF bank account. The Government will consult with relevant stakeholders on its design and implementation.

Recommendation 8.21

The Panel recommends that the SMSF registration process capture the details of the person who has provided advice in relation to the establishment of the SMSF and the service providers who establish the SMSF (if they are different entities). This information should also be available to ASIC to assist in regulating AFSL holders and form part of the risk assessment process for both ASIC and the ATO.

Government response

Support

The Government agrees with this recommendation and will consult with relevant stakeholders on its implementation.

Recommendation 8.22

Controls should be put in place to ensure SMSFs can be neither established with, nor subsequently change their name to, the name of, or a name similar to, an existing large APRA fund and that other naming rules applicable to bodies corporate under the Corporations Act be applied to SMSFs.

Government response

Support

The Government agrees with this recommendation and will consult with relevant stakeholders on its implementation.

Recommendation 8.23

Government should provide a system (Super Fund Lookup or an alternative) to:

- a. provide appropriate SMSF information to large APRA funds (which would include member level details, confirmation that identification of member/trustees has occurred and the SMSFs bank account number) to enable the large APRA fund to verify the details of SMSF membership before processing rollover requests to SMSFs; and
- b. require the large APRA fund, upon appropriate confirmation, to immediately process the request and electronically transfer the rollover to the validated SMSF bank account.

Government response

Support

The Government agrees with this recommendation. However, APRA-regulated funds will be required to process rollover requests within 30 days of confirmation of the SMSF details, rather than immediately, to be consistent with existing requirements for other rollovers. Requirements relating to rollovers will be subject to change under recommendation 9.15(c).

Recommendation 8.24

Legislation should be passed to provide for criminal and civil sanctions to enable the ATO to penalise and discourage illegal early release scheme promoters.

Government response**Support**

The Government agrees with this recommendation and will consult with relevant stakeholders on its implementation.

Recommendation 8.25

The Government should amend existing tax laws so that:

- a. amounts illegally early released be taxed at the superannuation non-complying tax rate; and
- b. an additional penalty, based on a sliding scale of penalties that takes into account the individual circumstances, should apply.

Government response**Support**

The Government agrees with this recommendation and will consult with relevant stakeholders on its implementation.

Recommendation 8.26

Legislation should be passed so that rollovers to an SMSF be captured as a designated service under the AML/CTF Act.

Government response**Support**

The Government agrees with this recommendation and will consult with relevant stakeholders on its implementation.

Recommendation 8.27

The Government should amend the SIS Act so as to automatically deem anything permitted by the SIS Act or a tax act to be permitted by SMSF trust deeds.

Government response**Support**

The Government agrees with this recommendation and will consult with relevant stakeholders on its implementation.

Recommendation 8.28

Legislation should be passed so that the covenant requiring separation of fund assets from personal or employer assets, as set out in section 52(2)(d) of SIS, be replicated in a SIS operating standard.

Government response**Support**

The Government agrees with this recommendation and will consult with relevant stakeholders on its implementation.

Recommendation 8.29

The Government should amend the investment strategy operating standard so that SMSF trustees are required to consider life and TPD insurance for SMSF members as part of their investment strategy.

Government response

Support

The Government agrees with this recommendation and will consult with relevant stakeholders on its implementation.

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[Next – Government response: Chapter 9 SuperStream >>](#)
[<< Previous – Government response: Chapter 7 Retirement](#)
[Return To – Contents](#)