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Cooper Review – Final Self-Managed Super Fund (SMSF) Recommendations

The Cooper review is a comprehensive review of Australia's superannuation system and it was charged with examining and analysing the governance, efficiency and operation of Australia's superannuation system. The review was undertaken in three phases, Phase 1 dealt with governance, Phase 2 with operation and efficiency and Phase 3 with structure. The final Cooper Review report containing all recommendations was released by the Government on the 5 July 2010.

A summary of the most relevant SMSF recommendations contained and how they apply is summarised below.

- **SMSF membership limit of 4 members should <u>not</u> be increased** - the review panel noted that an increase in the membership limit would be an advantage as it would allow for more family members to join a fund together. However the panel believes that the potential control issues, increased management and agency costs associated with expanding the limit outweigh the possible advantages.

- **Legislation should be passed to empower the ATO to issue administrative penalties against SMSF trustees on a sliding scale** - the panel believes that the ATO should be given power to issue trustees with administrative penalties, the maximum amount being set by legislation. Currently the ATO only has power to deem a fund to be non-complying and therefore subject to maximum penalties which is an "all or nothing" approach. Furthermore the panel recommends that fines imposed under an administrative penalty regime should be payable personally by the trustee(s) who have committed the breach and not drawn from the funds of the SMSF.

- **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 time** – the panel favors a direct approach where the ATO is able to issue directions to an SMSF to fix contraventions of the law within a specified time frame. The panel believes that replacing the current time-consuming system that relies on the SMSF trustee initiating the undertaking with the ATO will lead to better efficiency in this area.

- **The ATO should be given the power to enforce mandatory education for trustees who have contravened the SIS legislation** – although the panel does not support mandatory trustee education across the whole sector it is in favour of compulsory education for trustee who has contravened the SIS Act regulations. Compulsory education in these instances will assist to increase trustees understanding of their regulatory obligations.

- **Financial Advisers should be required to develop specialist knowledge when providing advice in relation to SMSFs** – the panel believes that licensing requirements (RG 146) for financial advisers in the area of SMSFs is currently too low. The minimum levels of knowledge should be increased to include specialist knowledge of the SIS Act, SIS regulations, tax law and their application to SMSFs.

- **Accountants are no longer able to provide advice in regards to the set-up of a SMSF** – accountants had previously been able to advise clients regarding the set-up of SMSFs but not about investments within the fund. The panel supports the Governments move to abolish the accountants' licence exemption and believes that all advisers should be uniformly licensed by ASIC to be able to provide advice on SMSF including their establishment.

  Please note that dmca is able to continue to provide advice on all facets of the SMSF area through our financial advisory division - dmca Wealth Solutions Pty Ltd, as we already meet the knowledge and licensing requirements.

- **Increased registration and qualifications for SMSF Auditors** – the panel recommends that the Government appoint ASIC as the registration body for approved auditors. The panel's proposal is that ASIC would have the power to determine the qualifications required to be registered, set competency standards, develop and apply a penalty regime.

  This would ensure that SMSF auditors have the necessary knowledge and skills required to undertake their duties, especially in relation to SIS regulatory requirements.

- **SMSF Borrowing is here to stay** – the panel recommends reviewing SMSF borrowing arrangements in two years time to ensure that borrowing has not become

a 'significant focus' for SMSFs. Furthermore the panel recommends that legislation be passed to require credit providers to collect and provide data to APRA that would enable the Reserve Bank to publish statistics on the level of finance being provided to superannuation funds.

This means that SMSFs will be able to take advantage of the new borrowing rules to finance the purchase of property and investments through installment warrant products for at least the next two years.

- **No more in-house assets** – currently a SMSF trustee can have up to 5% of the total fund assets invested in in-house assets. In-house assets are loans to or an investment in a related party of a fund. The panel recommends that no SMSF assets may be invested in in-house assets. SMSF trustees that already have investments in in-house assets will have 5 years to dispose of them, however this will allow trustees with pre-1999 unit trust to retain their investment indefinitely. Business real property which is leased to members or related parties will still however be allowed.

- **In-specie transfers to SMSFs to be abolished** – the panel recommends that the SIS regulation relating to the acquisitions and disposals of assets (eg shares or business real property) between related parties and SMSFs (i.e. between a member & the trustees of the fund) should be amended so that:

  (a) where a market for the assets exists, all acquisitions and disposal between SMSFs and related parties must be conducted through the market; or
  (b) where no market exists, acquisitions and disposals of assets between related parties must be supported by a valuation from a qualified independent valuer.

  This recommendation will eliminate the ability for members to in-specie transfer assets such as shares into their SMSFs and will require the member to sell their shares in their personal name and require the fund to purchase these shares on the market.

- **No more collectables and personal use assets** – the panel proposes a ban on all investments in collectable and personal use assets (i.e. paintings, jewellery, antiques, stamp collections, wine etc). This means that SMSF trustees would be prohibited from making any new acquisitions of these assets and those currently holding such

assets would have 5 years dispose of them. This measure is intended to ensure that all SMSF are being maintained for a proper purpose.

- **Assets to be valued at net market value** – a recommendation of the review is to abolish the practice of reporting SMSF assets at their purchase price in the financial statements, especially when it comes to real estate investments. It recommends that legislation should be passed to require SMSF trustees to value their assets at net market value with the ATO to publish valuation guideline to ensure consistent and standardised valuation practices.

- **Life & TPD Insurance to be included as part of the SMSF strategy** – the panel has recommended that the government should amend the investment strategy operating standard to require SMSF trustees to consider life and TPD insurance for a fund's members as part of their investment strategy rather than impose an insurance default within SMSFs.

If you have any queries on how these changes may affect you, please do not hesitate to give us a call. These changes are recommendations only at this stage and will need to be legislated before they take effect. Therefore the implementation of these recommendations will depend on the timing and possibly the outcome of the proposed upcoming election.