



15 November 2013

Ai-Lin Lee
Policy Guidance Officer
Financial Advisers
Australian Securities and Investments Commission
GPO Box 9827
Melbourne, VIC 3001

Email: policy.submissions@asic.gov.au

CPA Australia Ltd
ABN 64 008 392 452

Level 20, 28 Freshwater Place
Southbank VIC 3006
Australia

GPO Box 2820
Melbourne VIC 3001
Australia

Phone 1300 737 373

Outside Aust +613 9606 9677

Website cpaaustralia.com.au

Dear Ai-Lin,

Consultation Paper 216 Advice on self-managed superannuation funds: Specific disclosure requirements and SMSF costs

CPA Australia does not support ASIC's proposals to modify Pt 7.7 of the Corporations Act by way of a class order to require financial advisers who provide personal advice to clients on establishing or switching to a self managed superannuation fund (SMSF) to provide a mandated warning and additional specific disclosures to clients.

We believe the consultation paper:

- does not provide clear evidence of an existing systemic issue
- does little to address the identified concerns
- if implemented, it will unnecessarily add to the compliance burden faced by financial advisers
- fails to consider non-regulatory approaches which may be superior to the proposed regulatory approach
- duplicates the existing mechanisms employed by the Australian Taxation Office (ATO) to inform all trustees, not just those who seek licensed advice, of key information, obligations and responsibilities, and
- fails to consider the new regulatory environment in which licensed financial advisers now operate following the commencement of the Future of Financial Advice (FoFA) reforms on 1 July 2013.

We believe that before proposing new regulation, ASIC should first consider non-regulatory approaches to the issues identified. It appears that in this Consultation Paper, ASIC is exploring imposing additional regulation rather than exploring other options, such as issuing best practice guidance for licensing financial advisers providing personal advice to clients on establishing or switching to an SMSF, which may in fact better address the apparent mischief.

Notably, we are concerned that the Consultation Paper proposes that specific information should be provided as a warning rather than one of the important key factors for a client to consider when deciding whether to establish or switch to an SMSF.

If you have any questions regarding this submission, please do not hesitate to contact me

Yours sincerely

Keddie Waller
Policy Adviser – Financial Planning

Specific comments on CP 216

B Our proposed disclosure requirements

Warning clients about lack of statutory compensation for SMSFs

CPA Australia does not support mandating the provision of the proposed disclosure in Table 1 by way of a Class Order, nor do we support this information being required to be provided in a specific format.

We believe this proposal is unnecessary and fails to consider the new regulatory environment in which licensed financial advisers now operate since the commencement of the FoFA reforms on 1 July 2013.

The best interests duty and related obligations now, arguably, require a financial adviser to disclose the same information being proposed in Table 1 when recommending a client establish or switch to an SMSF. We believe that it is premature to introduce new mandated requirements in addition to this legislated obligation by way of a Class Order without allowing an appropriate time to review whether the new legislation results in this information being provided by licensed financial advisers.

Further, this proposal will have limited benefit given only a minority of individuals who set up an SMSF first seek the advice of a licensed financial adviser.

However, while the vast majority of consumers are unlikely to be aware that Australian Prudential Regulation Authority (APRA) regulated superannuation fund may apply to the Minister for financial assistance under Pt 23 of the SIS Act in limited circumstances, it is important information that a potential trustee of an SMSF should be aware of. Although it is uncertain that providing this information will be of benefit to a client considering setting up or switching to an SMSF. This is supported by one submission to the Parliamentary Joint Committee Inquiry into the collapse of Trio Capital which stated:

My wife and I both rolled over our industry regulated superannuation funds into our SMSF. At the time we were not aware that SMSF's were not covered by fraud compensation, but if we were we would probably have proceeded anyway as we thought it inconceivable that any regulated and approved investment, managed fund, or licensed managers or directors in the Australian financial system could be fraudulent.

If there is a perception by investors that by virtue of the fact that the investment is regulated that it is unlikely to be fraudulent, specifically warning the client that they will not have access to Pt 23 of the SIS Act is unlikely to have any significant impact on their decision.

It must also be remembered that cases of fraud in the regulated superannuation sector are rare (APRA, 2011) and that the Minister may only grant financial assistance to a APRA regulated superannuation fund where:

- the fund has suffered a loss as a result of fraudulent conduct or theft
- the loss causes a substantial diminution of the fund's assets leading to difficulty in paying benefits; and
- the grant is in the public interest.

This may further create the perception that the associated risk of fraud or theft is minimal and that there is no guarantee that compensation will always be granted.

We are also concerned, given the Government's focus on reducing unnecessary regulation, that this proposal duplicates existing information and requirements of the ATO.

The ATO website and several of its publications produced specifically for potential and existing SMSF trustees, clearly states that SMSFs do not have access to the government's financial assistance program that is available to trustees of APRA regulated funds in the case of financial loss due to fraudulent conduct or theft

Importantly, this information is also already included as the final point of the *Trustee Declaration* that all new trustees (and directors of corporate trustees) of an SMSF are required to sign.

Given this, we find it perplexing that ASIC would consider mandating financial advisers ask their clients to sign another document also acknowledging that SMSFs are not entitled to receive compensation under the SIS Act. We believe a more efficient and constructive solution would be for ASIC to encourage financial advisers to use the ATO trustee declaration as part of their discussions with clients to draw attention to the key factors, obligations and responsibilities of establishing or switching to an SMSF.

CPA Australia therefore believes that implementing the proposed class order is unnecessary as it fails to:

- consider the new regulatory environment in which licensed financial advisers now operate under FoFA; and
- acknowledge the existing mechanisms in place by the ATO to inform all trustees, not just those who seek licensed advice, that they do not have access to compensation arrangements under Pt 23 of the SIS Act in the event of fraud or theft.

Notably, we are also concerned that ASIC believe this information should be provided as a specific warning rather than one of the important key factors to consider when deciding whether to establish or switch to an SMSF.

Recommendation:

CPA Australia recommends that ASIC do not implement the proposed class order as it is unnecessary and fails to consider:

- **the new regulatory environment in which licensed financial advisers now operate; and**
- **acknowledge the existing mechanisms in place by the ATO to inform all trustees, not just those who seek licensed advice, that they do not have access to compensation arrangements under Pt 23 of the SIS Act in the event of fraud or theft.**

The Trio inquiry did find evidence that some SMSF trustees were unaware that they did not have access to compensation. This could suggest that the ATO trustee declaration may not be as effective as it could be in ensuring that SMSF trustees understand relevant information including that they will not have access to government's financial assistance program in the event of loss due to fraud or theft.

Currently, while the declaration must be signed and retained it does not need to be provided to the ATO unless requested.

CPA Australia recommends that changes are made to this process which requires the completed trustee declarations to be submitted as part of the Trustee's application to register the SMSF. By requiring the trustee declarations to be provided as part of the registration process, it:

- places greater importance on the document in the eyes of the trustee highlighting their obligations, responsibilities and important information
- ensures that each trustee of the SMSF has completed and signed the declaration prior to the SMSF applying for registration
- ensures that each trustee signs a declaration, not just those trustees who seek licensed financial advice; and
- provides certainty to the ATO that each trustee has signed the declaration, which can be recorded and retained.

We acknowledge that the trustee declaration is a requirement of the ATO, not ASIC. However, in an environment where there is growing regulatory overlap we believe it is imperative for regulators to work together to ensure efficient and effective outcomes for both the industry and consumers.

CPA Australia also encourages ASIC and the ATO to promote to potential and existing trustees, the benefits of completing voluntary education, such as the *SMSF Trustee Education Program*¹ developed by the accounting profession to assist trustees in understanding their role and responsibilities. This would help

¹ <http://www.smsftrustee.com/cpa/htm/home.asp>

ensure potential trustees have a clear understanding of the key information, obligations and responsibilities if they establish an SMSF. It would also assist existing Trustees maintain and update their knowledge.

Disclosure requirements

CPA Australia believes that there are a range of key factors that must be discussed with a client when considering recommending the client establish or switch to an SMSF, which is why in 2006 we first issued *Guidance note for advising on SMSFs*² to provide best practice guidance for our members. However, CPA Australia does not support mandating the provision of the proposed disclosure in Table 2 by way of a Class Order, nor do we support this information being required to be provided in a specific format.

We believe that this measure is unnecessary and essentially replicates existing obligations that licensed financial advisers now have when providing advice given the introduction of the best interests duty and related obligations.

While we also acknowledge ASICs concerns that its recent review of a sample of SMSF advice found there was 'significant room for improvement in the quality of advice received by clients' it must also be remembered that ASIC targeted files that looked more likely to contain problems. This report can therefore not be relied upon as representative of the advice being provided to clients seeking advice on SMSFs. We believe that it is inappropriate to mandate specific requirements on all licensed financial advisers primarily based on these findings, which fail to demonstrate a systemic issue exists.

Further, the report reviewed advice that was provided before the commencement of the FoFA reforms on 1 July 2013, including the best interests duty and related obligations. We do not believe it is appropriate to propose amendments to new legislation that only commenced a matter of months ago based on research that were conducted under the previous regulatory framework.

CPA Australia recommends that before ASIC consider modifying new legislative requirements, it should first explore non-regulatory mechanisms, and issue the information contained in Table 2 as guidance by means of an Information Sheet to the industry on best practice when recommending the establishment of or switching to an SMSF. The tips provided in Table 6 of Report 337 could be updated to reflect the new legislative requirements when providing advice and also be incorporated. The information guide should then be linked to INFO 82 *Super switching advice: Complying with your obligations*.

Recommendations:

- **CPA Australia recommends that ASIC do not implement the proposed class order. It fails to consider the new regulatory environment in which licensed financial advisers now operate and is influenced by a report that purposely examined advice that was expected to more likely contain problems.**
- **CPA Australia recommends that ASIC issues the information in Table 2 and the information from Table 6 in Report 337 (updated for FoFA) as a new Information Sheet providing general information and compliance tips for financial advisers when recommending establishing or switching to an SMSF.**

Again, we find it perplexing that ASIC would consider mandating financial advisers ask their clients to sign another document this time acknowledging the responsibilities and risks associated with running an SMSF.

We believe a more efficient and constructive solution would be for ASIC to encourage financial advisers to use the ATO trustee declaration as part of their discussions with clients to draw attention to the key factors, obligations and responsibilities of establishing or switching to an SMSF.

This approach in addition to publishing a new Information Sheet on providing this advice would be an efficient mechanism to demonstrate to licensed financial advisers best practice when recommending an SMSF. It would also be consistent with the objectives of the government to reduce unnecessary regulation.

CPA Australia also encourages ASIC and the ATO to promote the potential and existing trustees of trustee education programs, such as the SMSF Trustee Education Program developed by the accounting profession.

² <http://www.cpaaustralia.com.au/~media/Corporate/AllFiles/Document/professional-resources/financial-planning/guidance-note-for-advising-on-SMSFs.pdf>

C Our proposed guidance on SMSF costs

Guidance on costs

CPA Australia is generally supportive of the findings by Rice Warner.

We believe that this information can be useful; especially for licensed financial advisers considering recommending a client switch to a SMSF given they must explain in the statement of advice in clear and simple terms the costs for the client if the advice is acted on. Further, it would be expected that a financial adviser would need to consider and discuss the likely costs of establishing a SMSF in order to comply with the best interests duty and related obligations.

CPA Australia recommends that ASIC include guidance on the costs associated with setting up, managing and winding up an SMSF as part of the guidance in the new information sheet previously recommended. We believe it would be beneficial to provide a range of dollar costs, rather than actual dollar costs, to reflect that some costs will depend on individual circumstances.

We recommend that ASIC also publish this information on the MoneySmart website. While cost is only one key factor to consider, it is important and by making this information available through MoneySmart it ensures that all consumers have access to this information, not just those consumers who seek licensed financial advice. The ATO could also incorporate or refer to this information in their published guidance.

Recommendations:

- **CPA Australia recommends that ASIC include guidance on the range of dollar costs associated with setting up, managing and winding up a SMSF as part of the guidance in the new information sheet previously recommended.**
- **CPA Australia recommends ASIC publish this information on the MoneySmart website to ensure all consumers have access to this information, not just those consumers who seek licensed financial advice.**