

*Submission in Response to ASIC
Advice on self-managed
superannuation funds: Specific
disclosure requirements and SMSF
costs*

Consultation Paper 216

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National Seniors

Australia

About National Seniors Australia (National Seniors)

With almost 200 000 members Australia-wide, National Seniors is the consumer lobby for the aged 50 and older. It is the fourth largest organisation of its type in the world.

We give our members a voice – we listen and represent our members' views to governments, business and the community on the issues of concern to the over 50s.

We keep our members informed – by providing news and information to our members through our Australia-wide branch network, comprehensive website, forums and meetings, bi-monthly lifestyle magazine and weekly e-newsletter.

We provide a world of opportunity – we offer members the chance to use their expertise, skills and life experience to make a difference by volunteering and making a difference to the lives of others.

We help our members save – we offer member rewards with discounts from over 7000 businesses across Australia, we offer discount travel and tours designed for the over 50s, and we provide older Australians with affordable, quality insurance to suit their needs.

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Recommendations

1. **National Seniors recommends** that ASIC modify the *Corporations Act 2001* to reflect all proposed disclosure requirements and obligations on those who provide advice on an SMSF.

Compliance with the disclosure requirements

2. **National Seniors recommends** that ASIC publish the details of AFS licensees holders and advisors who do not comply with the disclosure requirements, including listing the details of the disclosure requirement which was not complied with.
3. **National Seniors recommends** that ASIC ensure copies of all general SMSF disclosure notices are provided online and in hardcopy from ASIC and the ATO.
4. **National Seniors recommends** that ASIC require advisors, where possible, to tailor the disclosure requirements regarding the risks and obligations of establishing SMSFs to the individual client's situation.
5. **National Seniors recommends** that ASIC require AFS licensees and their authorised representatives to sign a document confirming they have provided all disclosure documents to the client and also made a genuine attempt to explain the risks and responsibilities of running an SMSF.
6. **National Seniors recommends** that ASIC implement a timeframe of *as soon as practical after the legislative change but no more than three months* for the implementation of the additional disclosure requirements.

Lack of statutory compensation warning

7. **National Seniors recommends** that ASIC amend the "lack of statutory compensation warning notice" to also include the number of times that compensation has been paid out to Australian Prudential Regulation Authority (APRA) regulated funds (to compensate for fraud and theft) within the past 10 or 5 years, compared with how many SMSFs were affected but not compensated.
8. **National Seniors recommends** that ASIC require AFS licensees and their authorised representatives to sign a document confirming they have provided the warning documentation to their clients and have made a genuine attempt to explain the warning and its potential impact on their clients portfolio.

Costs of SMSFs

9. **National Seniors recommends** that ASIC modify the *Corporations Act 2001*, to require AFS licensees and their authorised representatives to advise and inform clients of the costs of setting up, managing and winding up an SMSF as determined by the Rice Warner research.
10. **National Seniors recommends** that ASIC ensure that actual and a range of dollar cost estimates be included within the disclosure notices and where possible tailored to the individual client's situation, including the costs associated with setting up, running and winding up an SMSF, the time cost associated with managing an SMSF, and the cost of obtaining insurance.
11. **National Seniors recommends** that ASIC require advisors to provide their clients with a cost comparison between establishing a SMSF and retaining their existing superannuation investments, including the minimum SMSF cost-effective balance as determined by the Rice Warner research.

Communication Channels

12. **National Seniors recommends** that ASIC utilise communication channels which are preferred by over 50's, including banks and Government departments to communicate the risks and obligations of establishing or switching to an SMSF.
13. **National Seniors recommends** that ASIC work with the ATO and develop mobile applications and other electronic assistance for advisors and SMSF investors comfortable with utilising electronic tools.

Education

14. **National Seniors recommends** that ASIC create an education course and test which all investors are strongly encouraged to participate in as a component of the ATO SMSF registration process ensuring that before the SMSF fund is established all investors have the opportunity to become aware of their risks and obligations.
15. **National Seniors recommends** that ASIC develop and provide additional guidance material to assist advisors to explain the risks and obligations of SMSFs to their clients.
16. **National Seniors recommends** that ASIC make all the supporting material developed on the key risks and obligations of an SMSF freely available online and in hardcopy.

Introduction

National Seniors welcomes the opportunity to respond to Australian Securities and Investment Commission (ASIC) consultation paper: *Advice on self-managed superannuation funds: Specific disclosure requirements and SMSF costs* (the consultation paper). National Seniors supports ASIC's proposed disclosure requirements and obligations and believes that they will benefit all clients who are considering setting up or switching to a Self-Managed Superannuation Fund (SMSF).

National Seniors is concerned by the lack of awareness and understanding of the risks and obligations associated with SMSFs amongst many existing and potential SMSF investors many of whom are aged 50 and older.

In 2012, 76 percent of SMSF investors were aged 50 and older¹, losses experienced at this life stage are particularly devastating as individuals do not have the capacity to recover their losses before retirement. In addition the over 50s' are still recovering from the losses experienced as a result of the Global Financial Crisis, recent reports indicate that the superannuation asset pool will only regain its pre-GFC levels in 2016².

It is also concerning that the recent Parliamentary Joint Committee on Corporate and Financial Services concluded that most SMSF investors were unaware that statutory compensation is unavailable to investors in SMSFs in situations where there is fraud or theft³. National Seniors own research indicates that many investors are unaware of basic financial risks⁴.

This lack of financial literacy leaves many investors ill-equipped to manage the extra risks responsibilities and costs associated with an SMSF. The recent collapse of Trio Capital, which affected many SMSFs is a practical example of the damage that a lack of awareness and understanding of the risks and obligations of SMSFs can inflict on investors.

Given the level of risk associated with investing in an SMSF, it is essential that advisors are thoroughly disclosing and advising clients on all the risks and obligations of an SMSF. Further, all individuals including those that do not seek professional advice should be educated and have access to information regarding

¹Australian Securities and Investments Commission (2013) REPORT 337: *SMSFs: Improving the quality of advice given to investors*, Australian Government.

²Deloitte Actuaries & Consultants (2013) *Dynamics of the Australian Superannuation System The next 20 years: 2013 – 2033*, Deloitte.

³Parliamentary Joint Committee on Corporations and Financial Services (2012) *Inquiry into the collapse of Trio Capital*, Australian Government.

⁴National Seniors Australia (2012) *Financial Wellbeing: Concerns and choices among older Australians*, Productive Ageing Centre.

the risks, costs and obligations of an SMSF in a consumer friendly format, utilising communication channels preferred and assessable by the over 50's.

Our Position

National Seniors supports ASIC's proposed disclosure requirements and obligations. However, National Seniors believes that a broader approach is required to ensure that not only are additional disclosure requirements provided to clients, but equally essential, that clients understand the content of the additional information disclosed. National Seniors has made separate recommendations to achieve this broad approach.

National Seniors believes that all additional disclosure requirements discussed in the consultation paper should be enforced on advisors by modification of the *Corporations Act 2001*.

National Seniors recommends: that ASIC modify the *Corporations Act 2001* to reflect all proposed disclosure requirements and obligations on those who provide advice on SMSFs.

Similarly if Australian Financial Services (AFS) licensees holders and their authorised representatives (advisors) do not comply with the proposed disclosure requirements there must be effective consequences. These should include the publication of the AFS licensees holder and advisors details on the ASIC web site and the disclosure requirement which was not complied with.

National Seniors recommends: that ASIC publish the details of AFS licensees holders and advisors who do not comply with the disclosure requirements including the details of the disclosure requirement which was not complied with.

To provide all potential SMSF investors (including those that do not seek professional advice) with the opportunity to become aware and comprehend the risks and obligations associated with SMSF, copies of all general SMSF disclosure notices should be provided online and in hard copy from ASIC and the Australian Taxation Office (ATO).

National Seniors recommends: that ASIC ensure copies of all general SMSF disclosure notices are provided online and in hardcopy from ASIC and the ATO.

The implementation of this recommendation would allow for this information to be studied prior to the sometimes high pressure environment associated with seeking advice on the decision to establish or switch to an SMSF.

Although acknowledging, the useful information available on the ATO and the ASIC MoneySmart web sites regarding SMSF, many over 50's cannot and do not

want to access the current suite of SMSF information resources which are available online. Only 40 per cent of people aged 65 to 74 years and 20 per cent of people aged 75 and older access the internet.⁵ Given the limited use of the internet by the segment who predominantly invests in and administers SMSF;

National Seniors recommends: that ASIC utilise communication channels which are preferred by over 50's including banks and Government departments to communicate the risks and obligations of establishing or switching to an SMSF.

The impact of suffering losses in superannuation savings is damaging for all investors. Large losses can negatively affect an individual's economic confidence, optimism for retirement and health, and can lead to severe cost cutting and to the postponement of retirement. For over 50's who comprise the majority of SMSF investors losses in superannuation are devastating.

Over 50's cannot simply work longer or return to work; they may have retired for health reasons and cannot physically return to work⁶. Over 50's also face a much harder struggle to find new employment. Job seekers aged 55 years and over currently languish in unemployment for an average 71 weeks compared to 41 weeks for job seekers aged 25-44 years⁷.

With the increasing costs of living including essential living items increasing by more than double the inflation rate over the past five years⁸, over 50's have already cut back on their discretionary spending leaving no room for further cuts to accommodate losses from superannuation.

Given the magnitude and complexity of SMSF risks and obligations;

National Seniors recommends: that ASIC create an education course and test which all investors are strongly encouraged to participate in as a component of the ATO SMSF registration process ensuring that before the SMSF fund is established all investors have the opportunity to become aware of their risks and obligations.

To support advisors and clients meeting their obligations and improving their understanding of SMSF risks;

⁵ National Seniors Australia (2011) *Older Australians and the Internet Bridging the Digital Divide* Productive Ageing Centre.

⁶ National Seniors Australia (2012) *Ageing Baby Boomers in Australia: Understanding the effects of the global financial crisis* Productive Ageing Centre.

⁷ National Seniors Australia, (2012) *Barriers to Mature Age Employment: Final Report Of The Consultative Forum On Mature Age Participation*, Productive Ageing Centre.

⁸ National Senior Australia (2013) *A squeeze on spending? An update on household living costs for senior Australia*. Productive Ageing Centre.

National Seniors recommends: that ASIC work with the ATO and develop mobile applications and other electronic assistance for advisors and SMSF investors who are comfortable with utilising electronic tools.

Given, the disastrous impact of superannuation losses on over 50's and the magnification of risks and obligations through SMSFs, it is essential that ASIC implement the proposals of the consultation paper and National Seniors recommendations as soon as possible.

Proposals

B1: Warning for clients about lack of statutory compensation for SMSF

National Seniors agrees with the proposed disclosure requirements and warning contained in Table 1 on page 19 of the consultation paper. National Seniors also believes that the disclosure requirements and warning will benefit clients who are considering setting up or switching to an SMSF and help to inform clients of the loss of the statutory compensation available for losses suffered because of fraud or theft if they establish or switch to a SMSF.

National Seniors recommends: that ASIC amend the “lack of statutory compensation warning notice” to also include the number of times that compensation has been paid out to Australian Prudential Regulation Authority (APRA) regulated funds (to compensate for fraud and theft) within the past 10 or 5 years, compared with how many SMSFs were affected but not compensated.

This recommendation would provide a real world context and assist clients to comprehend the risk of the loss of statutory compensation.

National Seniors believes that the warning should be given to clients in a prescribed format, utilising large text and clear language. Given the risk involved this warning should be provided as a separate stand-alone document.

National Seniors supports the requirement that clients sign a document acknowledging that they understand that SMSF are not entitled to receive compensation. However, National Seniors believes that this obligation to sign should also be expanded to the advisors.

National Seniors recommends: that ASIC require AFS licensees and their authorised representatives sign a document confirming they have provided the warning documentation to their clients and have made a genuine attempt to explain the warning and its potential impact on their clients' portfolio.

This additional obligation (to attempt to explain) is proposed to somewhat compensate for any lack of comprehension of the documentation by clients, due to lack of financial literacy or other disadvantages.

As indicated earlier, National Seniors suggests that this warning is again brought to the attention of potential SMSF investors as a component of the registration process. National Seniors believes that a one off disclosure of the loss of statutory compensation for SMSF as proposed in the consultation paper is insufficient to ensure that clients have an appropriate level of understanding to allow them to make an informed and considered decision to establish or switch to an SMSF.

B2: Responsibilities, Obligations and Risks associated with SMSF

National Seniors agrees with the proposed disclosure requirements in Table 2. It is essential for all individuals considering the establishment of or considering switching to an SMSF to be aware, understand and consider the numerous risks and obligations associated with SMSFs. National Seniors believes the proposed disclosure requirements will benefit clients who are considering setting up or switching to an SMSF.

National Seniors supports that the proposed disclosure requirements are provided to the client in a prescribed format utilising large text and clear language.

National Seniors recommends: that ASIC require advisors, where possible, tailor the disclosure requirements of the risks and obligations of SMSF to the individual client's situation.

A generic template could be developed which includes standard disclosure text and paragraphs but also allows for the advisor to populate the template with the individual's client details where appropriate.

National Seniors supports the requirement that clients sign a document acknowledging the responsibilities and risks associated with running an SMSF. Again, National Seniors believes that this obligation to sign should also be expanded to advisors.

National Seniors recommends: that ASIC require that AFS licensees and their authorised representatives sign a document confirming they have provided all disclosure documents to the client and also made a genuine attempt to explain the risks and responsibilities of running an SMSF.

To assist advisors in adequately disclosing the risks and obligations beyond providing the standardised documentation,

National Seniors recommends: that ASIC develop and provide additional guidance material to assist advisors to explain the risks and obligations of SMSF to their clients.

The guidance material should be developed with a consumer focused approach including providing examples and case studies which demonstrate the risks and obligations.

In order to capture all individuals who are considering establishing or switching to an SMSF and who do not seek professional advice;

National Seniors recommends: that ASIC make all the supporting material developed on the key risks and obligations of SMSF freely available online and in hardcopy.

B3 - Proposed Timeframe for the Implementation

National Seniors *does not* agree with the proposed timeframe of six months after ASIC releases the class orders on the disclosure requirements.

National Seniors recommends: that ASIC implement a timeframe of *as soon as practical after the legislative change but no more than three months'* for the implementation of the additional disclosure requirements.

National Seniors believes that a shorter implementation timeframe is justified, as the consultation paper correctly indicates that “the proposed disclosure requirements largely reflect the advice on establishing an SMSF that advisors should already be giving clients” and the risk that investors will continue to establish and switch to an SMSF without basic understanding of the risks and obligations is too great to allow for a long implementation timeframe, given the devastating impact on investors when losses occur within an SMSF.

C1- Proposed Guidance on SMSF Costs

National Seniors agrees with the Rice Warner’s Costs of Operating SMSFs Reports approach to describing the cost of SMSF and the Report’s findings.

National Seniors believes it is essential that advisors are obligated to disclose and inform clients of the key findings of the Rice Warner research.

National Seniors *does not* support the proposal that ASIC only provides guidance to compel advisors to show that they have informed their clients of the costs

associated with an SMSF. National Seniors believes that the proposed approach of providing guidance as opposed to a class order, would be ineffective and does not reflect the high level risk that clients are exposed to when they choose to establish or switch to an SMSF.

National Seniors recommends: that ASIC modify the *Corporations Act 2001*, to require AFS licensees and their authorised representatives to advise and inform clients of the costs of setting up, managing and winding up an SMSF as determined by the Rice Warner research.

In addition *National Seniors recommends:* that ASIC ensure that actual and a range of dollar cost estimates should be included within the disclosure notices and where possible tailored to the individual client's situation, including the costs associated with setting up, running and winding up an SMSF, the time cost associated with managing an SMSF, and the cost of obtaining insurance.

National Seniors believes that it would be beneficial if clients were aware of the cost of establishing an SMSF compared to other superannuation options such as an APRA regulated fund.

National Seniors recommends: that ASIC require advisors to provide their clients with a cost comparison between establishing an SMSF and retaining their existing superannuation investments, including the minimum SMSF cost-effective balance as determined by the Rice Warner research.

To ensure that the disclosed SMSF costs remain accurate, ongoing research and monitoring should occur.

Conclusion

Given, the disastrous impact of superannuation losses on over 50's and the magnification of risks and obligations through SMSFs, it is essential that ASIC implement the proposals of the consultation paper and National Seniors recommendations as soon as possible.

ASIC must consider and seek to improve the awareness and understanding of all potential SMSF investors including those that do not seek professional advice. National Seniors believes that a education course and test incorporated into the SMSF registration process is required to target all investors considering entering into an SMSF.

This course would act as a final touch point to educate all investors of their risks and obligations and ensure that they are making informed choices.

National Seniors looks forward to continue working with ASIC improve the awareness, understanding and quality of advice given of SMSF investors.