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The Treasury
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16 Sep 2004

Dear Sir/Madam,

Submission to the Review of the Provision of Pensions in Small Superannuation Funds

My family feel that they may have been hoodwinked by the government propaganda concerning the need for individuals to save for their retirement.

Governments have given the impression on many occasions that they were encouraging individuals to be self-reliant and save for their own retirement.
To this end, tax concessions and new pension types were introduced, including the complying income-stream (defined benefit) pensions which could be offered by Self-Managed Funds (SMSFs).

My family responded to the government initiatives by setting up a SMSF in 1997. According to our Fund actuary, a large sum of money was required (greater than the Reasonable Benefit Limit) if we wished to take appropriate defined-benefit pensions in our retirement that would last our expected lifetimes (we face a particular problem because all our close relatives are extremely long-lived). We therefore, over a period of years, progressively sold our non-super investments in order to place the required sums of money in our superannuation Fund.

However, it now appears that persons like us who have saved in this way for their retirement will be heavily penalised in the future, owing to the new Regulations that were introduced in May 2004.

It appears that the whole basis of our seven-year plan has been destroyed by the change to the governing legislation introduced in May 2004. This change was made without any obvious consultation with the individual members who own and operate SMSFs, despite it being the SMSFs who will be most clearly and adversely affected. The reduced choice

they now face will result in forced changes to their own plans, plans which in many cases have been laid down over a considerable number of years.

The “consultation” process which took place appeared to mostly reflect some very successful lobbying by the retail pension industry. Consequently, the new legislation should prove a further government-induced boon to the retail industry, given that defined-benefit pensions were probably the fastest-growing SMSF pension stream in percentage terms by value (albeit still a small proportion of all the pensions operating through SMSFs).

The new regulations appear to reflect yet another triumph of superannuation industry lobbying. According to an article in the Sydney Morning Herald dated 20 August 2004 (“Get set for the brave new world of TAP”), the lobbying effort was led by David Shirlow of Macquarie, who is credited with the new market-linked income stream pension (or TAPs as they are called by some). However, this new type of pension is no substitute for a defined benefit pension, because it is just a more complicated type of allocated pension that has been granted complying pension concessions. It neither provides any certainty of income, nor will it last for an individual’s life expectancy (despite the odd tinkering with dates). Inevitably it will mean that a proportion of TAP pensioners will outlive this pension type and become a charge on the government.

As SMSFs will not in future be allowed to offer and manage their own complying income-stream pensions, such pensions will only be available if purchased from big business, with all the loss of control and high fees and excessive charges that many of us had planned so hard to escape. (I well recall being sold an AMP pension scheme in the1970s, and in retrospect consider that it served mostly to enrich the sellers).

So SMSF members, such as ourselves, who have built up sizable assets in the SMSF over many years which were solely intended for defined benefit pensions to be drawn down from the SMSF in their retirement, will now find their assets treated as “excessive” for taxation purposes. This is exacerbated if a Fund has been too successful with their superannuation investments, because such growth will now not be rewarded via the rebate on pensions, but will now be penalised as “excessive”.

Superannuation as an investment vehicle now appears, to my family at least, to be an extremely poor choice. Take my partner as an example. Under the pre-May 2004 legislation she would have had a low RBL count, well within the limits, when she received her defined benefit pension as planned via her SMSF. However, under the new restrictive pension alternatives for SMSFs she now finds herself facing an excessive RBL count, which will all be taxed at her top marginal rate. She would have been better off leaving her assets outside the superannuation system altogether, especially as many of the investments she held were pre-1985 and were therefore exempt from capital gains taxes. She is right to blame me for listening to the blandishments of the government on this matter. As one commentator noted, “such a blatant about-face in the rules undermines respect for the government, the system, and the rule of law. It is a strange way to encourage retirement savings”.

The government might claim that they have since granted a short-term reprieve, such that defined benefit pensions will still be available to my partner prior to July 1st, 2005. The problem is that she is 61 years old and acknowledged as a brilliant teacher. She does not wish to be forced to resign from her full-time teaching job in order to begin an agreed life-time pension, simply to comply with abrupt changes in the legislation.

What Should be Done

1. **Leave the defined benefit option in place for SMSFs**.

The defined benefit option is increasingly being chosen by members of SMSFs, primarily by those members who want a specified pension with a high degree of probability. I do not think that their increasing popularity should be seen as an excuse for such pension stream options to be closed off, but quite the reverse. One reason there are more members commencing defined benefit pensions in SMSFs is because they do not want to become pensioners of the State, but wish to plan for their own independence.

Under the previous Regulations, it was a requirement that such defined-benefit pension streams must be tailored by an actuary to meet the expected lifespans of the individual members with a 70% probability. The actuary would then supervise the SMSFs on an annual basis to ensure that the pension could still be paid. It was accepted by SMSF members that in 30% of cases the actuary might need to re-base the benefits and pay a reduced pension. However, although about 30% of these pensions will not fulfil their original expectations that is no reason to outlaw all such pensions.

2. **Simplify the Operations of SMSFs.**

Huge amounts of money are being spent unnecessarily on Trust Deeds and subsequent Updates (which seem to cost at least twice the original Deed price) each time the legislation changes. For example, the press have suggested that no existing Trust Deeds can legally pay the new market-linked income stream pension (or TAPs). Why cannot the supervising authority have a free pro-forma Deed on tap that could be adopted by all those who wanted it? It could be updated by the ATO as the legislation changed. The advantage would be that the ATO and the SMSFs would each know where they stood from the start, and there would be considerable financial savings to the wider community.

Some essential information is too difficult to find. The ATO does not seem to have the latest Life Tables on its website, nor is it not freely available elsewhere on the Web, although copies can be purchased.

3. **Consult with SMSFs prior to changes in the legislation.**

I accept this does pose difficulties, because the retail superannuation industry is rich, powerful and easily heard, while the SMSFs are fragmented and without any obvious lobby. Experience shows that SMSF members are unlikely to hear of any relevant government enquiries. For example, I read widely, but was unaware of the recent deliberations of the Senate Economics Committee on

Superannuation, and the hearings did not appear to include any representatives from the SMSFs.

As an active SMSF member I would be happy to develop my views further and provide additional examples before any relevant review body, if I was invited to assist.

Yours sincerely,

David Lethbridge.