

# SMSF Working Group

## Issues paper on ATO Processes

May 2011

### PROPOSED REFORM

The Super System Review noted that the superannuation system as a whole needs to have confidence that members are who they claim to be. For the SMSF sector, this issue is magnified. Once superannuation savings leave the large APRA fund sector, there are few safeguards around the subsequent movement of assets. Reliable and effective SMSF member identification at registration is therefore essential.

Currently, SMSFs can be registered online or through a paper-based process. SMSF registration applications are processed by the Australian Business Register. Identity checks of the member/trustees are not part of the registration process; nor are there any records of whether the SMSFs are established through an adviser.

Proposals for more rigorous processes for proof of identity and information validation in relation to SMSFs and their members are consistent with the proposals currently under review as part of SuperStream (Chapter 9 of the Final Report). Consultation on proof of identity and information verification issues will continue as part of SuperStream.

The issues for discussion are detailed below.

### ISSUES

#### Issue 1

#### Recommendation 8.20 – Proof of Identity Processes

The Government supports the recommendation to legislate so that:

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

One option for this process is:

- (i) The members/trustees establish the SMSF (signs the trust deed, etc).
- (ii) The SMSF trustees register the SMSF with the ATO. The SMSF receives an ABN and provides the ATO with a list of all SMSF members.
- (iii) The SMSF trustees/members take the ABN and open a bank account. The financial institution would access the ATO systems to confirm the individuals opening the account are registered members of the SMSF. At this time, the bank would perform the POI on the individuals opening the account and send data back to the ATO confirming POI had been completed and confirming the bank account details.
- (iv) The ATO would then allow large APRA funds to confirm these details when a member of an SMSF requests a rollover – see Issue 2 below.

There may also be a need to have POI process carried out by a third party in circumstances where a new member joins an existing SMSF or where an SMSF holds an online bank account. A third party such as Australia Post who currently undertakes POI for the Australian Passport Office could be engaged to undertake POI for members of SMSFs in these circumstances.

These identity requirements will not apply retrospectively to existing SMSFs. The exception to this is where an existing SMSF is organising a rollover from a large APRA fund. In these instances, SMSFs could notify the ATO of its nominated bank account and the ATO could then verify the relevant details and update the electronic portal (discussed in issue 2).

### Questions

Is the POI process detailed above the most effective option? Are there any alternatives to consider?

Should POI be performed on an SMSF member if that individual has previously satisfied POI for a personal account they hold with the same bank?

## Issue 2

### Recommendation 8.23 – SMSF Details on Super Fund Lookup

The Government supports the recommendation to provide a system (Super Fund Lookup or an alternative) to:

1. 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
2. Require the large APRA fund, upon appropriate confirmation, to immediately process the request and electronically transfer the rollover to the validated SMSF bank account.

In supporting this recommendation, the Government notes that 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).

The proposed process is detailed in **Attachment 1**.

Implementation of this recommendation will require an electronic portal to allow APRA funds to confirm with the ATO:

- SMSF member/trustee level details (names and date of birth);
- Status confirming that the identity of the member/trustee has been verified – (process already undertaken as described in Issue 1);
- SMSF's validated bank account number; and
- Member tax file number validation.

Where the details do not match, the obligation would be on SMSF trustees to update the SMSF details with either or both the ATO and their financial institution, as applicable.

There are two electronic systems that currently exist that could be used by APRA funds:

1. ATO Business Portal – The SMSF membership verification system currently operates within the ATO Business Portal and allows APRA funds to confirm SMSF membership. This is an established tool for APRA funds and would require updates for the inclusion of additional information to be displayed.
2. Super Fund Lookup – This website provides basic information about superannuation funds. It operates in an unsecure environment and is available to the general public. The website is owned by the Department of Innovation, Industry, Science and Research. This option would require significant upgrade in IT systems to allow for a secure environment to be created for additional details to be displayed to APRA funds.

### Questions

Which electronic system would be most effective for APRA funds to verify SMSF and member details?

Are there any other verification processes to consider?

## Issue 3

### Recommendation 8.26 – AML/CFT legislation

The Government supports the recommendation to pass legislation so that a rollover to an SMSF is captured as a designated service under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).

The AML/CTF Act imposes a number of obligations on reporting entities when they provide designated services. These obligations include:

- customer identification and verification of identity
- record-keeping
- ongoing customer due diligence and reporting (suspicious matters, threshold transactions and international funds transfer instructions)

Currently, the rollover of a superannuation benefit to an SMSF is not captured as a designated service under the AML/CTF Act. The proposed amendment will result in APRA funds providing a designated service to members of the SMSF requesting the rollover. This will subject APRA funds to a range of obligations under the AML/CTF Act including in relation to customer identification, reporting and the requirement to have an AML/CTF program. These funds may already have these obligations in relation to other services they provide.

In making its recommendation, the Super System Review noted that as the trustees and members of an SMSF are the same, there is greater scope for assets, once received in the SMSF, to be diverted for illicit purposes.

Introducing a new designated service to apply to regulated superannuation funds when they roll over assets to an SMSF, will ensure consideration is given to the AML/CTF risk associated with the rollover of assets, and that appropriate customer identification and reporting obligations exist when assets exit the formal financial sector.

### Questions

Will this proposal cause delays in superannuation benefits being rolled over to an SMSF? If so, are there any possible ways that delays could be minimised?

Does the proposed amendment create an unnecessary burden or practical difficulty in light of the risks it seeks to address?

## Issue 4

### Recommendation 8.21– Information Provided at Registration

The Government supports the recommendation 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 would 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.

Implementation of this recommendation will require amendments made to the electronic and paper versions of the registration form. A new question would be added to the registration form. This question could be either a mandatory or voluntary question for the applicant to complete.

If the question is mandatory, the application will be considered incomplete if the question is not answered. Where the applicant knowingly fails to declare that an adviser assisted in the establishment of the fund, penalties may be applied for making a false declaration.

If the question is voluntary, the applicant has no responsibility to disclose details of their adviser. There is some risk that the question will be left blank which may result in the objective of this recommendation not being achieved.

### Questions

What details of the adviser/s should be disclosed on the registration form?

Should this disclosure be voluntary or mandatory?

## Issue 5

### Recommendation 8.22 – Naming Conventions

The Government supports the recommendation for controls to 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 for other naming rules applicable to bodies corporate under the Corporations Act be applied to SMSFs.

Currently, an SMSF can register with any name. The Super System Review noted that in a few instances, an SMSF has been established with a name that mirrors an existing large APRA fund. This then allows cheque rollovers, intended for the large APRA fund, to be banked into the SMSF's bank account. Similarly, a person could register an SMSF with a name suggesting a connection with a bank, an insurance company or the government.

To implement this recommendation, the ATO would be given the authority to ensure an SMSF cannot register if the ATO determine that the name is the same or similar to a large APRA fund or other relevant entity. Additionally, the ATO could be given the authority to direct existing SMSFs to change their name if the ATO determined the name to be the same or similar to a large APRA fund or other relevant entity.

As registration occurs through the Australian Business Register, amendments may need to be made to the ABN Act.

### Questions

Should this measure apply to all existing SMSFs?

Are there any other naming rules that should apply to SMSFs?