

News

SMSFS CAN'T AVOID LIMELIGHT

By [Mike Taylor](#) on 15 October 2010 [0 comments](#)

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Thanks to the Cooper Review, there exists widespread belief that the regulatory arrangements around self-managed superannuation funds (SMSFs) will not be subject to significant change.

The SMSF sector continues to be one of the fastest growing segments of the financial services industry and it is hard to conclude other than that those accountants and financial planners who have specialised in advising on self-managed super have been spruiking the findings of the Cooper Review to their clients.

The Cooper Review findings are probably best encapsulated by the following:

"Given that SMSF members are entirely responsible for their own decisions, the panel sees the ability to be genuinely self-directed and self-sufficient as an important feature of SMSFs.

"The Panel believes that trustees should not lightly be exposed to administrative and other burdens that are not directly relevant to building their retirement savings through sound investment practices."

Cooper's preliminary pronouncements on SMSFs then went on to state:

"All superannuation funds, including SMSFs, benefit from valuable tax concessions that are designed to encourage and help members to save for retirement. In addition, the Government underwrites the risk of SMSF failure via the social security system. The panel believes that this justifies some intervention in the way SMSFs are managed and that the community also has a right to a certain level of information about them. That intervention is currently reflected in a range of rules and restrictions in the Superannuation Industry (Supervision) Act (SIS Act) and associated regulations."

All of which has been widely interpreted as meaning that the Cooper Panel did not believe there was a need for the Government to act to impose more regulation on SMSFs or to impose scrutiny similar to that imposed on conventional superannuation funds.

It should go without saying that, in circumstances where SMSFs are perceived as attracting members with significant accountant balances away from retail master trusts and industry funds, those sections of the superannuation industry were less than impressed by the Cooper Panel's relative inaction.

Indeed, there was much muttering during and after the Cooper Review about its chairman, Jeremy Cooper, running his own SMSF and therefore having an interest in maintaining the status quo.

And, on the face of it, the members of the Cooper Review panel did appear to adopt a benign view of the compliance issues around SMSFs and factors such as how frequently they have been used as the vehicles for illegal early release superannuation schemes and non-compliant related party transactions.

The temptation for the Government and regulators to reject the benign approach advocated by the Cooper Panel is exemplified by the simple statistic that the number of SMSFs in Australia has multiplied from 190,000 funds in 1999 to 430,000 funds today.

It is also worth noting a recent speech by Australian Taxation Office (ATO) deputy commissioner Neil Olesen pointing out that "in 2005-06 we made 12 funds non-complying, in 2009-10 it was 185; before 2007-08 we hadn't referred any approved auditors to their professional bodies for disciplinary action; in 2009-10 we referred 30 and disqualified 11; in 2005-06 we disqualified 27 trustees, in 2009-10 it was 94".

In fairness, Olesen said that the increase in action on the part of the ATO was primarily owed to the growth which had occurred in the industry.

Notwithstanding the fact that it remained suppressed by the impact of the global financial crisis (GFC), a new element has been injected into the SMSF — the ability to borrow within super and, more particularly, SMSFs.

The actual changes came into play in late 2007 but with the GFC spooking investors, there was little take-up before the beginning of this year.

With a number of firms actively promoting borrowing within super to invest in real estate, it is probably only a matter of time before the critics define the nexus between the investment performance of SMSFs and the always volatile nature of the Australian residential real estate market.

There appears to have been no significant slackening in the rate at which SMSFs are being established and, as the assets under management continue to rise, only the truly naïve would believe that the Government will not at some point move to more closely monitor the sector.



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