SISFA
SMALL INDEPENDENT SUPERANNUATION FUNDS ASSOCIATION

22 August 2006

General Manager
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The Treasury
Langton Crescent
PARKES ACT 2600

By e-mail to: **simplersuper@treasury.gov.au**

Dear Sir/Madam

A Plan to Simplify and Streamline Superannuation

SISFA welcomes the opportunity to make a submission on the Government's plan to simplify and streamline superannuation as first announced on Budget night, 9 May 2006 and described in the Detailed Outline paper released shortly thereafter.

We commend the Government for taking such positive steps to improve the superannuation system and we expect that the proposed changes, when implemented, will increase participation in superannuation by the community as a whole as well as significantly enhance superannuation benefits in the long term.

While we are broadly supportive of the Government's plan, there are several areas that require further clarification and/or consideration before implementation. Our comments on those areas are as follows:

Post-tax (undeducted) contributions

- Treasury's fact sheet and the Treasurer's announcement on 13 June 2006 provided some clarity on the operation of the averaging over three years of the proposed annual cap on post-tax contributions. Specifically, the third-last paragraph on page 1 of the fact sheet provides that: "Under these arrangements, a person could make a maximum one-off contribution of $450,000 ***every*** three years" (emphasis added). SISFA supports this position, which implies that the averaging over three years is not merely a transitional measure and we trust this will be reflected in the final legislation.

- The proposed application of the work test for people aged 65 and above to the averaging provisions as set out in Treasury's fact sheet is administratively cumbersome and arguably inconsistent with the policy intention which is simply to "allow people to accommodate larger one off payments" (Detailed Outline paper, p. 30). Whether or not that is in fact the intention of the Government, ***we submit that the work test only apply in the year the contribution is made***. This means that a 74-year old person could in fact be eligible for a $450,000 one off payment.

- ***Alternatively, in the spirit of the Government's objective to simplify superannuation, we recommend that serious consideration be given to removing the contributions work test for people aged between 65 and 75***. After all, does there remain any reasonable basis for denying the acceptance of a contribution from a 74-year old person who is not working but permitting a contribution's acceptance from a 74-year old who has happened to have worked for 40 hours over a 30-day period? Removing the work test for this group of people would also be consistent with recent removal of the compulsory cashing requirement for people over age 65 and no longer working.

- Clarification that the cap does not include the Government Co-contribution is needed and we submit that transfers from overseas superannuation arrangements also be excluded. This is for the reason that such transfers are typically required to be paid directly to an approved superannuation fund in Australia and only have an undeducted contributions component by default.

- As an alternative to the annual cap on undeducted contributions, a cumulative lifetime limit could be considered and tracked by the ATO in a similar fashion to the post age 55 low rate threshold for ETPs.

- ***If the annual cap is maintained, then it should be subject to indexation***. To avoid complexity, and consistent with the averaging over three years, indexation could occur every three years and require the resultant amount to be rounded to, say, the nearest $1,000.

- Any mechanism for the return of excess contributions together with earnings will be necessarily complex and problematic. We expect that the rules for this measure will take some time to be developed and will continue to evolve throughout the consultation process. At this stage, we offer the following comments for consideration in the formulation of the rules:

  A prescribed formula or statutory interest rate for determining earnings could be useful;

  The meaning of earnings, especially in the case of net investment losses, will require clarification;

  Assessments for the return of excess contributions should be directed to individuals in the first instance, who in turn must approach their superannuation fund/s to recover the relevant amount.

Taxable Contributions

- ***We believe that the Government should extend the proposed concessional limit of $100,000 for those 50 and over from 1 July 2007 from being a transitional measure (ending on 30 June 2012) to a permanent one***.

- Further or in the alternative, consideration could be given to averaging the concessional limits over three-year periods (similar to the proposed approach for undeducted contributions).

- ***In any event, indexation of the limits should apply***. As with our suggestion for undeducted contributions, a simpler approach than annual indexation could be triennially with a rounding mechanism applicable.

Pensions

- Members who did not have contracts with life offices must have the option of unwinding existing complying and defined benefit pensions and converting to the new simplified pension if they wish to. ***The regulations should permit but not require the commutation of existing superannuation pensions***.

- The proposed new pension minimum payments should remain as expressed in the table on page 22 of the Detailed Outline paper and not be replaced by annual PVF's.

- ***Clarification is sought on whether a pension can revert to a superannuation law dependant (e.g. an adult child) or if tax law dependants only are contemplated***. In our view, the superannuation law definition should be applicable, which is consistent with the current situation and as contemplated by the sole purpose test under section 62 of the SIS Act. ***In any event, a pension should be able to continue to be paid to more than one dependant***. We fail to see why there should be a limit of one reversionary beneficiary.

- Similarly, it is unclear whether a superannuation death benefit (prior to commencement of a pension) will be permitted to be paid in the form of a pension instead of a lump sum to one or more dependants of a taxpayer. We submit that this option should indeed be available.

Death Benefits

- The proposed tax of 15% on lump sum death benefit payments to non-dependants (for tax purposes) ***should not apply*** where the deceased person is age 60 or over for the simple reason that that person would otherwise have been able to withdraw lump sums tax-free prior to their death. This is consistent with the proposed taxation of a reversionary pension where the primary beneficiary was aged 60 or over at the time of death.

- Pensions paid on death to non-dependants for tax law purposes (whether reversionary or not) could be taxed at the beneficiary's marginal tax rate (less any deductible amount and pension rebate). This is certainly the preferred alternative to the proposal implicit in the Government's plan to require such benefits to be paid out as lump sums.

Miscellaneous

- With the abolition of RBLs, how will superannuation be protected from bankruptcy claims? Are the proposed changes to the bankruptcy laws as recently announced intended to replace the current RBL protection mechanism?

- While the plan proposes to change the assets test treatment of income streams, is it proposed to change the income test applying to pensions for social security purposes?

- It is proposed for superannuation benefits to comprise only two components, exempt and taxable. Clarification is needed on whether people can choose between the components when taking a benefit payment or the components must be represented proportionately in all withdrawals.

- Will the ability to determine a post June 1994 invalidity component be preserved after the proposed ETP component crystallisation process?

- The superannuation contributions splitting regime will be required to be reviewed in light of the proposed cap on undeducted contributions and the new concessional limits for taxable contributions.

We look forward to participating further in The Treasury's consultation process.

Yours sincerely

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Director and Chair

Graeme McDougall
Chief Executive Officer