18 August 2016

Sabina Wynn
The Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

E-mail: info@alrc.gov.au

Dear Ms Wynn

Dixon Advisory welcomes the opportunity to make a submission to the Australian Law Reform Commission's Issues Paper on the very important issue of Elder Abuse.

Dixon Advisory is a privately-owned provider of premier wealth advisory services focused on retirement, superannuation and self-managed super funds (SMSFs). Founded by Daryl and Kate Dixon in 1986, the firm has been helping Australians build wealth through super for 30 years. Through our supported SMSF service, Dixon Advisory assist Trustees with everything from paperwork requirements to navigating market volatility and succession planning for SMSF management in later years. The Dixon Advisory Investment Committee also shares proactive investment insights on global financial and investment issues to help Australian's make informed financial decisions at every life stage.

Given our business, our submission focuses on the risk areas and potential mitigation considerations for financial abuse faced by older Australians.

Should you have any questions please do not hesitate to contact me on 0421 567 345.

Sincerely,

Nerida Cole
Managing Director – Financial Advisory

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Question 24: What evidence is there of older people being coerced, defrauded, or abused in relation to their superannuation funds, including their self-managed superannuation funds? How might this type of abuse be prevented and redressed?

In line with the reports made to the NSW Legislative Council report on Elders Abuse in NSW, there is overall limited evidence of older people being coerced, defrauded, or abused in relation to their superannuation money.

We expect this is related to a very low incidence of financial abuse at a an individual's superannuation account level as a direct result of the extensive regulatory and legal requirements currently in place on Trustees of Superannuation funds. We note, as no centralised reporting framework exists this may also limit the collection of data in this area.

Measures to reduce the risk of financial abuse should occur at a community wide level rather than narrowed down to particular sectors or industries.

Specifically, preventative policies must be focused on:

1. Increasing awareness of financial abuse of older people at a community wide level, including at a public level and business-wide level (broader than just the superannuation industry and financial services industry).
    a. This view is in line with many respected experts who contributed to the NSW Legislative Council's report into Elders Abuse, including Council of the Ageing, Victorian Office of the Public Advocate, Australian Institute of Family Studies and Alzheimers Australia [1]. These groups emphasised the importance of community wide education and awareness campaign as critical step to preventing abuse.
2. Introducing an efficient and transparent process for registering Power of Attorney documents as key to helping financial institutions and the superannuation industry to protect vulnerable clients.
    a. A more considered framework could offer more protection for consumers and industry through greater transparency of validity and currency of documents.

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[1] NSW Legislative Council report on Elders Abuse in NSW, 24 June 2016, pages 31-44

What is Dixon Advisory doing?

As life expectancies continue to increase, more people will reach retirement with a greater amount of wealth held in super than the generation before. As a client focused business, our role includes looking ahead for potential challenges and helping to put in place strategies so our clients can be prepared for these potential challenges. Dixon Advisory offers our clients a structured education programme focused on increasing the confidence of baby boomer women with key financial decisions. Research from the United States indicates that having autonomy and knowledge of financial affairs and reducing social isolation can act as a preventer to financial abuse. In addition we have a "succession" service programme which includes education around the use of powers of attorney, trustee structuring options and getting family members involved.

How does superannuation work in the context of accessing funds?

We set out below and over the page a summary of the practical operations of superannuation funds, noting that most transactions which access money will flow through a bank account of a financial institution. To action requests for withdrawal from a superannuation fund, the individual making the request must have authority on the account, including for Self Managed Super funds.

All superannuation funds are bound by stringent access requirements such that transfers and withdrawals from superannuation funds are restricted and a number of conditions need to be met to access funds:

- A withdrawal from superannuation can only be made once a condition of release is met and for most Australians, this means reaching their preservation age, and even in this circumstances, withdrawals can only be transferred to a personal bank account held in the name of the member or jointly with their spouse.
- A rollover (when a person's super fund is transferred to another super fund in their own personal name or to an SMSF where they are a trustee) is subject to stringent checks by the superannuation fund where funds are withdrawn from and payments are made directly between the Trustees of the superannuation funds – not to individual member's bank accounts.
    - A transfer from a person's super fund to another person's super fund is only allowed in limited situations such as death or divorce, and in these events additional checks and paperwork is required.

What about members of Self Managed Super Funds ?

- Self Managed Super Funds (SMSFs) are covered by the same strict requirements as other superannuation funds (APRA regulated).
- Trustees of SMSF are required to review ATO documentation setting out the roles and responsibilities of Trustees and sign a declaration of their comprehension of these key areas before setting up a SMSF. Each year all trustees must sign a new declaration of their compliance with these Trustee responsibilities and submit Annual financial statements, tax lodgement and member reports to an independent Auditor. After the Auditor has reviewed and approved, the Tax reports must then be submitted to the ATO.
- Withdrawals of funds from a SMSF occur through a bank account transaction from the SMSF to the payee's account. Again pension payments and lump sum withdrawals of funds from a SMSF occur through the transfer of funds from the superannuation trustee's nominated bank account to the individual member's bank account. In some limited cases withdrawals may occur through the 'in-specie' transfer of assets. For listed equities (i.e. a share listed on the ASX) this occurs through approved share registries.
- Similar to establishing a joint bank account, SMSF Trustees can decide the level of signing authority required to make transactions within a SMSF (i.e. one to sign, both to sign).
- In many cases, the administration of a SMSF is outsourced to a professional service (such as Accountant and Investment Advisor), these parties implement the instructions of the Trustees and depending on the service arrangement may provide advice and guidance to assist the Trustees with the management of the fund and/or investment management decisions.
- The Trustees of SMSF are also the members of the SMSF, many SMSFs are operated by couples who combine their finances to plan for their eventual retirement together. In the event of a SMSF Trustee passing away, a SMSF can operate as a single member fund. That is the surviving spouse can continue to operate the fund in accordance with their retirement goals.
- For all super funds types; once assets are transferred or withdrawn from the super fund, they are beyond the control or supervision of the superannuation trustee.

Existing legal protections offered under superannuation legislation

- The legislative protections relevant to financial abuse currently operating in superannuation are noted below. These protections include fiduciary duties as dictated by s62 of the Superannuation Industry (Supervision) Act 1993 and the best interest duty under s961B of the Corporations Act 2001. In addition, criminal laws regarding theft or fraud, statutes regulating the use of powers of attorney and equitable remedies of breach of fiduciary duty are also relevant to the superannuation industry.
- In addition to the statute and common law listed in the issues paper that protects superannuation members from financial abuse i.e. criminal laws regarding assault, theft or fraud, statutes regulating the use of powers of attorney and equitable remedies of breach of fiduciary duty, the following legislative duties greater enhance members' protection:
- The sole purpose test under s62 of the Superannuation Industry (Supervision) Act 1993 which applies to both super fund trustee and self-managed super fund (SMSF) trustee and stipulates that trustees need to take appropriate action to protect the fund's assets amongst others, for the sole purpose of providing retirement benefits for its members;
- The sole purpose test imposes an overall restriction on superannuation funds, essentially all super assets must be used for the retirement benefit of the member.
- The best interest duty under s961B of the Corporations Act 2001 which ensures that professional advice including in relation to superannuation needs to be provided to clients in their best interest to ensure the advice is fit for purpose;
- Staff of a financial services provider including superannuation owe their clients a common law duty of care in tort to exercise reasonable skill and care within the parameters of their duties - even if the relationship between the staff of a financial services provider is not one which is fiduciary in nature.

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