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Submission on Policy Issues Identified in the Interim Report

Groups

We, SR Group, have previously made submissions on behalf of the following groups:

PWF.0001.0001.5093 - [REDACTED]
[REDACTED]

PWF.0001.0001.5271 - [REDACTED]
[REDACTED]

PWF.0001.0001.5275 - [REDACTED]
[REDACTED]

PWF.0001.0001.5372 - [REDACTED]

PWF.0001.0001.6290 - [REDACTED]

PWF.0001.0001.8172 - [REDACTED]
[REDACTED]

PWF.0001.0001.8221 - [REDACTED]

PWF.0001.0001.9065 - [REDACTED]

PWF.0001.0002.0462 - [REDACTED]

PWF.0001.0002.1203 - [REDACTED]
[REDACTED]

Overview

Background Papers 24 and 25 mention a compensation scheme of last resort. 8.1.2 Intermediaries (page 344 of Interim Report – Volume 1) states “Should there be a mechanism for compensation of last resort?”

The Interim Report offered commentary on the remuneration practices of financial advisers, expressing displeasure at the ubiquity of conflicted remuneration and situations where financial advisers put their personal interests before the interests of their clients. The report also offered rather damning criticism of the Australian Securities and Investment Commission (ASIC) in its role as the corporate regulator. In particular, Commissioner

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Hayne highlighted ASIC's inadequate responses to misconduct. We would like to see formal recommendations made in relation to regulation in the Final Report.

We expect the Final Report will contain the full recommendations of Commissioner Kenneth Hayne QC in addressing the prevalence of misconduct in the financial services, banking and superannuation industries. We also expect that this report will make recommendations regarding the existing dispute resolution mechanisms and consumer redress vehicles currently available to Australian consumers, and we are hopeful that this will include the recommendation for the creation of a retrospective compensation fund.

Our Managing Director, Susie Bennell would like to be examined to advocate for a compensation scheme of last resort at the upcoming Royal Commission Round 7 Public Hearing into policy questions. Members from each of our ten groups are also able and willing to be examined.

The Need for a Legacy Compensation Fund

Each of our submissions focused on the overall need for a compensation fund. These people weren't defrauded because they failed to do their due diligence. These people were failed by the entire Australian government and financial system. Everybody failed in their duty to protect these people. And the investors are the ones who must suffer. It is time for this to end, it is time for compensation to be awarded.

The government must take more responsibility for these fiascos and must take steps to ensure it never happens again. But the government must also care for the affected individuals who spend every single day searching for avenues to recoup funds. It is time to make things right.

The external dispute resolution framework Supplementary Final Report chaired by Professor Ian Ramsay centres around the potential design of a compensation scheme of last resort, to which SR Group made a submission

A Liberal government press release revealed Ramsay's recommendations were being considered:

"Ramsay Review Part 2 has recently provided the Government with recommendations on the merits and design of a last resort compensation scheme and the benefits of providing access to redress for past cases. The report is currently being considered by the Government;"

On 21 December 2017, Minister for Revenue and Financial Services, Kelly O'Dwyer announced that the findings of the Ramsay Report will be put on hold.

"However, the Royal Commission will examine many of the issues that have been considered as part of the supplementary Ramsay report and as a result, the Government will defer its consideration of, and response to, the Report until the Royal Commission has concluded."

In July 2017, SR Group's Managing Director, Susie Bennell submitted a paper to Treasury entitled 'Submission for a Legacy Compensation Fund'. That paper along with Ms Bennell's Letter to the Senate Economics Legislation Committee form the architecture of how a Legacy Fund should be established.

The Fund must be set with predetermined guidelines, whereby any member or group of members applying for compensation must have exhausted every possible avenue of appeal (with evidence) prior to qualifying for the Legacy Fund. It is to be retrospective twelve years, dating back to 2006.

"Without the support of a Legacy Fund these candidates will not be able to support themselves through their retirement years. In fact, some have reached that stage in their life already... They did not intend to be robbed of their money. The greatest tragedy is that there is nowhere in the existing system that they can go to retrieve or recover their funds... This is the very reason why a Legacy Fund must be established."

The fund is to have a finite term of five years. Funding would come from the levy imposed on the big four banks and Macquarie in the May 2017 budget which hoped to raise \$6.2 billion in revenue over the next four years. This means the Legacy Fund would be an entirely government funded scheme. A cumulative total of \$2,500,000,000 is to be set aside for the Legacy Fund over the five year term. Anything not claimed or used during the five years is rebated to the overall External Dispute Resolution pool.

Pre-determination into what allocation of 75 – 100% restitution applies should take account the level of potential recovery that is available to the Commonwealth. All restitution expressly must be on a tax-exempt basis.

In receiving restitution in the Legacy Compensation Fund, the party relinquishes all entitlement to claim or make recoveries in other jurisdictions. This should be in a form which will then permit the party to subrogate its rights to the Commonwealth. The Government, through its own solicitors (the Australian Government Solicitors) can then pursue the perpetrators as appropriate.

"The Legacy Fund, having settled these claims, should (under separate advice) take on the Financial Advisors and others who benefitted from the deceptive and misleading conduct by other avenues. This might be by way of Public Examination via the Australian Government Solicitors office or externally funded (third parties) litigation."

The Legacy Fund is also for superannuants who have been defrauded. For the Government, it will ultimately be cheaper to compensate victims to allow them to take care of themselves in retirement. The cost of thousands of pension and welfare dependent victims will far outweigh the cost of compensating them for money they had no right to lose.

This document requests a recommendation for the immediate creation of a Legacy Fund, allowing victims of financial fraud to be compensated.