Superannuation Australia's **Comments on the Legislation** for *Simplifying Super*

Executive Summary

The Treasurer's much awaited legislation for *Simplifying Super* was made public on Thursday 7 December 2006. This date was in keeping with the stated position of tabling the legislation before the Christmas recess. Those responsible for meeting this key milestone should be congratulated.

Our impression of the legislation is that it follows reasonably well the expectations we've had following progressive releases of information since the May announcement. This is particularly so from the perspective of trustees and members of SMSFs.

Some key new points include the use of plain language and a consolidation into a single act which we support. Various comments on a number of issues raised in the legislation follow.

Comments by Superannuation Australia

* The use of new terms for example concessional and non-concessional contributions assist in making a break from the previous scheme. For example the expression Employment Termination Payment instead of Eligible Termination Payment is consistent with employment termination. Dropping the word "eligible" dissociates the payment from superannuation while also implying that it is not eligible for roll over into super.

* Some of the supporting Regulations have yet to be tabled but it is expected that they will be made public soon after the legislation receives Royal Assent. This may create problems from the perspective of limited time for planning or action depending upon what is contained in those Regulations.

* The Regulations dealing with the new pension is in the public domain. It may be of concern to existing MLP recipients that there may not be adequate opportunity to roll the pension over from a current product provider to a new provider in the future resulting in the recipient becoming captive to the existing provider as new MLP providers may not be attracted to the new environment. This is an unintended consequence of not allowing rollovers to the new pension for existing non-commutable pensions.

* Age 60 and over income from super is tax free. It will be classed as <u>not assessable and not exempt</u> income. This will be of particular interest and benefit to those in receipt of other assessable income.

* The management of all unclaimed superannuation will be improved. The Federal government will take control of all such accounts (except for those associated with State government schemes). This will create a single point of access for lost super (for non-State government schemes) rather than the current arrangements in which each State in

which the super fund is registered is involved in the holding of funds until claimed. This should streamline the arrangements overall.

* Penalties will be imposed on trustees for false and misleading statements even where these do not result in a tax shortfall. These are being promoted by government to improve the integrity of the system particularly with the availability of significant tax free benefits from super. In the same vein amendments to Part VIA (tax avoidance) legislation will be backdated to 7 December 2006 to protect against avoidance activities that may stem from *Simplifying Super*.

* Normal marginal tax rates will apply on earnings of the fund where the individual fails to supply their fund with their own TFN. When individuals make TFN declarations to their employers they are also authorizing their employer to provide their TFN to the super fund to which their employer is making contributions on their behalf. There may be some difficulties with current arrangements since they do not require this and it may be some time before any anomaly becomes apparent.

* Excess concessional contributions will be counted against the non-concessional cap. This is aimed at limiting higher income individuals making excess contributions.

* Whilst there appears to be no policy change in the treatment of death benefits, there is clearly an anomaly in relation to the receipt of such benefits depending upon whether the primary member has managed their super account through re-contributions or other means to maximize the tax free component of the account prior to death. This could also lead to death-bed withdrawals to minimize tax. It is recognized that a simple solution of allowing all death benefit payments to be tax free would overcome the problem but it might be seen to be excessively generous to high net worth individuals.

* All pension or income stream payments will be unitized on an individual payment basis so that each payment will have associated with it a deductible amount. The retention of deductible amounts etc for Centrelink purposes means that these amounts will still be carried over into the post 60 age group for government benefits. Currently this is done on an annual basis. Associated regulations that will impact Centrelink benefits are yet to be made available.

* SMSFs will be required to provide one annual return to include the levy, tax return and audit. The current penalty for late payment of the levy is to be repealed and replaced with a general interest charge.

* Simplification of the 10% rule for super contributions’ deductibility will be altered to mean that less than 10% (assessable and reportable fringe benefits) from employment as an employee is the relevant criterion. Whether or not the employer has super support is irrelevant; it is the source of the income that will be the determining factor in relation to the 10% rule. Whilst this might be good for simplicity, clearly it will mean that low income earners could be prejudiced.

* Limited discretion for Commissioner to allow excess contributions made prior to 7 Dec 2006 without penalty. Therefore this won't be the case for excess contributions made after that date? There have been many changes to the relevant limits over the last 9 months. This discretion should therefore be extended past the above date.

* A recent APRA Circular I.C.2 made the point that pension payments must be made in cash whereas lump sum payments may be made in specie. How do you define a Lump Sum in the light of the new pension standard? It is suggested that this relatively recent distinction be dropped and that benefits be taken in cash or in specie without regard to any arbitrary distinction being made between pension and lump sum payments.

We largely welcome the slant of the proposed legislation and although the penalties appear to be harsher than previous thought, in the interests of preserving the integrity of the revenue base this proposal has our support.

The Opposition's support is also very encouraging and could be taken as a sign of future legislative continuity for super. However it has indicated –and correctly so- that there is little in the proposal for those on mid to low incomes in the age bracket of 45 and over. This leaves open the possibility of such a target group being the main beneficiaries of some future review.

This concludes the comments from Superannuation Australia.

<u>Some background on Taxpayers Australia Inc and Superannuation Australia</u>

Taxpayers Australia Inc (formerly Australian Taxpayers Association) was established in 1919. It is a not-for-profit organisation committed to educating, informing and representing business and individual taxpayers alike. It is not affiliated with any political party or pressure group, and regularly makes submissions to the Government on taxation and superannuation issues on behalf of its members and all Australian taxpayers. The organisation is represented on major industry consultative forums with the Australian Taxation Office.

It aims to educate and inform taxpayers and to bring to members relevant and up to date information via expert publications, online information, through the media and via seminars on tax and superannuation.

Taxpayers Australia Inc provides this information in plain English. Its members include tax and business advisers, accountants, tax agents, financial planners, business people, investors, students, academics and individual taxpayers.
It is also a founding member of both The World Taxpayers Association and The Asia Pacific Taxpayers Union.

Superannuation Australia is a fully owned subsidiary of Taxpayers Australia and is responsible for the superannuation aspects of the group.