



File Name:

14 July 2004

The Secretary
Senate Economics Legislation Committee
Parliament House
Canberra ACT 2600
Facsimile (02) 6277 5719

Dear Dr Bachelard

Inquiry into the Superannuation Industry (Supervision) Amendment Regulations 2004 (No.2) as contained in Statutory Rules 2004 No. 84

In response to the Committee's request, the Association of Superannuation Funds of Australia (ASFA) provides the following comments on the above statutory rules and the terms of reference of the Committee's Inquiry.

ASFA notes that each term of reference is seeking quantitative statements. Term (a) on the extent of particular activity and term (b) on the extent of past losses to revenue and term (c) the estimated future losses to revenue. ASFA is not able to provide this information. The information required may however, be derived through an extensive analysis of records held by the Australian Taxation Office.

ASFA notes that Statutory Rules 2004 No. 84 also contain provisions to require prompt crediting of contributions to member accounts and make all of a member's benefits minimum benefits. ASFA strongly supports both of these measures, although certain matters still require clarification.

Perhaps a better approach to the matters under inquiry may be to consider the potential for such activities to occur and consider the desirability of permitting such opportunities to remain available.

The Assistant Treasurer's press release announcing the integrity measures stated that they were to "target tax avoidance arrangements used primarily by small and non-arms length superannuation funds." In general, these are self managed superannuation funds, small APRA funds and some very small corporate funds.

In response to terms of reference (a)(i), (ii) and (iii), it can be stated as fact that it is possible to achieve taxation, estate planning and reasonable benefit limit outcomes

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through a self managed superannuation fund that are generally not achievable with an arms length arrangement. While in part these outcomes were achievable through deficiencies in legislation, in general the outcomes were only achievable through the close relationship between the fund members and the fund trustees.

The following table sets out the growth in superannuation assets and the change in the average account balance size for superannuation funds with fewer than 5 members in the period June 1995 to December 2003:

Funds with fewer than five members

Date	Total Assets (\$ billion)	Total Members	Average account balance
June 1995	20.147	145,000	\$138,994
December 1999	61.556	368,000	\$167,271
December 2003	127.504	523,000	\$243,793

Source: APRA statistics

From the above figures it can be calculated that there was a 25% growth in average account balance in the four and a half year period from June 1995 to December 1999 and a 45% growth in average account balance during the subsequent four years.

Funds with non-arms length arrangements now account for 22.5% of total superannuation assets, but less than 1% of all superannuation accounts. This gives strong indication that these structures are popular with individuals who are likely to have a retirement benefit that exceeds the lump sum reasonable benefit limit.

Whilst significant revenue losses may not be currently occurring from the superannuation arrangements in place in these small funds, ASFA considers that at some stage it would have been necessary to give consideration to the potential impact on the revenue.

A basic premise of the current superannuation taxation arrangements is that a portion of taxation is deferred to the retirement phase and that fund members in like circumstances are treated equally. To the extent that the changes introduced in these statutory rules restore a level playing field and restrict the capacity of individuals to avoid or permanently defer taxation, ASFA supports the changes.

ASFA has previously publicly commented on the adverse impact of these changes on those retiring, or planning to retire, in the immediate future. This situation has since been resolved through the gazettal of Statutory Rules 2004 No. 155 which anticipates Statutory Rules 2004 No. 84 being in operation and permits the existing rules to continue until 1 July 2005 for persons who were members of the fund on 11 May 2004 and who retire, having reached age 55, or reach age 65 between 11 May 2004 and 1 July 2005.

Additionally, the government has announced that a review of the defined benefit fund rules for funds with fewer than 50 members is to be conducted by The Treasury.

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While supporting the general thrust of the changes to the defined benefit fund rules as contained in Statutory Rules 2004 No. 84, ASFA is of the view that outcomes similar to those expected may have been achievable through other, less disruptive, measures. The forthcoming review of the defined benefit fund pension arrangements by the Government will provide an opportunity for ASFA to explore this path further.

Having regard to the additional matters contained in Statutory Rules 2004 No. 84 and the content of Statutory Rules 2004 No 155 and the proposed review of the defined benefit fund rules, ASFA does not support the disallowance of Statutory Rules 2004 No. 84.

Yours sincerely,

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