



The Voice of Super

SUPPLEMENTARY

Submission to

Senate Economics Committee

Inquiry into

Taxation Laws Amendment
(Superannuation Contributions Splitting)
Bill 2003

by

**The Association of Superannuation Funds
of Australia Ltd**

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Federal Secretariat

Level 19
Piccadilly Tower
133 Castlereagh St
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001
Tel: (02) 9264 9300
Fax: (02) 9264 8824

1. Introduction

ASFA has previously lodged a submission to this inquiry covering the provisions of the *Taxation Laws (Superannuation Contributions Splitting) Bill 2003*. As noted in that submission, the bill does not of itself seek to allow the splitting of contributions. Splitting of contributions is to be enabled by changes to the Superannuation Industry (Supervision) Regulations.

While this supplementary submission primarily deals with the *Superannuation Industry (Supervision) Amendment Regulations 2003* (draft), the *Income Tax Amendment Regulations 2003* (draft) and the *Retirement Savings Accounts Amendment Regulations 2003* (draft), we take the opportunity re-raise our preference for a splitting of benefits and to raise an equity issue concerning same sex couples.

ASFA's interest in the superannuation contributions splitting proposal flows from the implications of this for members and for the administrative costs of funds. It will be important for any splitting of contributions mechanism to be as cost efficient as possible in order to maximise benefits for members who split their contributions and for their spouses. It is also important for any costs associated with contribution splitting to be borne by those directly involved in the contribution splitting rather than superannuation fund members more generally.

In our earlier submission, we demonstrated (see Section 3) that in terms of the overall maximising of retirement savings, equitable distribution of assets, cost effectiveness and simplicity, a better result could be achieved by permitting the splitting of superannuation benefits at the point of retirement of either spouse, rather than permitting splitting on an annual basis. While a benefit split option does not immediately enable the non-working spouse to have control over superannuation assets to the same extent as contribution splitting, it achieves the other objectives to a greater degree and ultimately gives the non-working spouse a larger retirement amount and greater flexibility and control of savings in the retirement phase.

ASFA acknowledges that budget constraints make it necessary to restrict the splitting to benefits accumulated after a specific date. We have previously provided to the government a simple method for apportioning contributions received before and after 1 July 2003. This method would not impose any new record keeping obligations on funds.

Splitting of benefits, rather than contributions, would also address key equity issues:

- It would allow the benefits of splitting to be extended to superannuation fund members with a defined benefit.

- It would permit couples to gain the full benefits of splitting contributions made after the start date, no matter when their relationship commences.
- It would permit members of funds who are not subject to the surcharge to split up to 85% of their deductible contributions.

One equity issue remains, however, regardless of whether it is the contributions or the benefits that are split. This measure continues the discrimination against same sex couples. ASFA has previously commented on the issue of same sex relationships and superannuation in a number of submissions, for example, in relation to self-managed superannuation funds, superannuation and divorce, a private members bill on superannuation, in a State level submission for the Victorian Equal Opportunity Commission and in a multi government department forum examining the issue of dependency.

ASFA considers that the current proposal to enable couples the opportunity to improve their financial position in retirement by maximising their retirement benefits should be expanded to include same sex couples.

As a first step in redressing the inequity, ASFA recommends that a new definition of spouse be inserted into Division 6.7 of the draft SIS Regulations to extend the splitting arrangements to include a person of the same sex living with the member in a genuine domestic basis.

We also support changes to the definition of spouse in both SIS and tax legislation in relation to the payment of benefits to same sex partners in the event of the death of a member of a fund.

2. The draft regulations

With reference to the draft regulations, the following comments are offered:

Income Tax Regulations 1936

Regulation 98C

This regulation deals with the manner in which a superannuation fund is required to advise the ATO of the details of the fund to which a split contribution has been paid.

There is a requirement under this regulation for a superannuation fund to report to the Australian Taxation Office (ATO) the ABN of a fund to which split contribution were rolled over, transferred or allotted. This requirement fails to recognise the fact that there are superannuation funds that do not have, and are not required to have, an ABN.

As the regulation stands, a fund trustee could be required under (draft) SIS Regulation 6.43 to transfer a split contribution to a fund without an ABN and yet, because of the

absence of an ABN, be unable to report the ETP to the ATO as required by (draft) IT Regulation 98C.

To rectify the anomaly, the only other number available for this purpose would appear to be the TFN of the receiving fund.

Superannuation Industry (Supervision) Amendment Regulations 2003.

Regulation 6.41

This regulation inserts new definitions into the SIS regulation, including a definition of the term *deductible contribution*.

The definition of deductible contribution could be better phrased. While the meaning of the term is well understood within the superannuation industry, the term itself is not defined in the ITAA. The ITAA generally talks in terms of either a superannuation contribution being an allowable deduction, or a contribution being taxable and forming part of the assessable income of the recipient entity under Part IX of the Income Tax Assessment Act 1936.

An alternative approach could be to model the definition on the proposed definition of *undeducted contribution*, which is the other side of the contribution coin.

A new definition of spouse could be inserted into this regulation to extend the splitting provisions as set out in Division 6.7 to same sex partners.

Regulation 6.43

This regulation sets out the format and detail of an application to roll over, transfer or allot an amount of contributions.

6.43(2)(a) The requirement that the application must be in writing appears to preclude a superannuation fund from providing secure electronic means for a member to effect a valid transfer request. ASFA considers that, as there is no requirement for the application to be signed by the applicant, the regulations should permit the acceptance of non-verbal application methods.

6.43(3)(3) As superannuation funds are required to report the details of transfers of split contributions to the ATO, it would assist efficient processing if these regulations recognised that reporting requirement.

For clarity, this regulation should require the member to provide the ABN of the receiving fund/RSA. Where the receiving fund does not, and is not required to, have an

ABN, supplying the TFN or some other information accepted by the ITAA Regulations should be permitted.

It would also assist processing efficiency, and minimise the chance of incorrect allocation of funds, if applications to transfer contributions to another fund were required to specify the account number of the applicant's spouse. Providing this information would help ensure that an account for the receiving spouse existed in the receiving fund and assist that fund to allocate the split contribution to the correct account.

Both the above suggested changes are targeted at improving the efficiency and effectiveness of the transfer process, and providing consistency with the requirements of proposed *Income Tax Regulations 1936* regulation 98C and in particular sub regulation 98C(e).

6.43(3)(c) The wording of this sub regulation requires the roll over or transfer to be made to an existing account:

“... ask the trustee to roll over or transfer the amount to an interest in another regulated superannuation fund ... (i) held by the applicant's spouse;”)

It is noted that this requirement may effect the capacity of an applicant's spouse to choose their own superannuation fund where the spouse does not currently hold a superannuation interest in any fund, as some funds will not open an account without first receiving a contribution. The restriction can be overcome by opening an account with a separate contribution prior to the contributions split request being made.

ASFA cautions that it would be unreasonable to expect a fund trustee to become involved in the account opening processes of another fund.

Regulation 6.44

This regulation details the factors that a trustee may take into account when making a decision as to whether or not to accept an application.

6.44(b) This sub-regulation limits the amount of a contribution that can be split to 100% of the applicant's undeducted contributions and 70% of the applicant's deductible contribution.

The 70% limit on the deductible contribution reflects that these contributions are subject to a 15% 'contributions tax' and may be subject to a Superannuation Contributions Surcharge tax of an additional 15%.

The sub-regulation does not recognise the recently legislated reduction in the maximum surcharge rate to 14.5% in 2003/04, 13.5% in 2004/5 and 12.5% for 2005/06 and future income years.

6.44(1)(f) This sub-regulation permits a trustee to refuse an application where an application for that member has already been processed in the same financial year.

In the situation where an application is received in one financial year, but not processed until the next, the trustee could refuse to process an application received during that second financial year, even though the application relates to contributions made in a different financial years.

As the intent of the regulation appears to be to allow trustees to restrict applications to one for each year of contributions, it is suggested that the wording of this provision, be changed from:

“... in the financial year in which the application is received;

to:

“... for the financial year in respect of which the application is received;

This amendment would prevent a trustee from refusing to process an application solely because the previous year's application was processed after the end of the financial year in which it was received.

Retirement Savings Accounts Amendment Regulations 2003

The comments made in respect of the draft SIS regulations apply in a similar manner to RSA regulations 4.38, 4.40(2)(a), 4.40(3)(a), 4.40(3)(c) and 4.41(1)(f).