
MINORITY REPORT BY GOVERNMENT MEMBERS

- Senators Childs, Evans and West - on Clause 64 Prohibition on Superannuation Funds Acquiring Assets from Members or Relatives

We strongly oppose the Committee's recommendation to provide exemptions to clause 64 involving property used wholly and exclusively in the business of a member together with certain strictly defined marketable securities and associated changes to alter the sole purpose test provision (clause 60).

Clause 64 was introduced because the Government has been concerned for some time about abuses of the purpose of superannuation tax concessions. Such abuses include the selling of members private assets, for example cars, jewellery and boats to their superannuation fund in order to obtain cash. These transactions are clearly inconsistent with the purpose of providing concessional tax treatment to superannuation funds to encourage members to save for their retirement.

The need for clause 64 was also highlighted by evidence given to the Committee by the Insurance and Superannuation Commissioner, Mr George Pooley, who claimed that there are quite a number of organisations who are giving advice on how funds can manipulate assets in a way that clause 64 is designed to prevent.

Certain written submissions to the Committee also supported the introduction of clause 64. The Australian Superannuation Funds Association (ASFA) claimed that clause 64 should remain in its present form. According to ASFA, to attempt to distinguish between what assets are acceptable and what assets are not would be a very complicated task and may open the way for further abuse.

Therefore, any relaxation to the blanket prohibition in its present form would lead to both administrative complexity, enforcement difficulties and even greater abuse of the tax concessions.

Providing exceptions to clause 64 will result in inequity under the preservation rule, which for most Australians bars access to superannuation benefits before age 55, as some people will be in a position to sell assets to their superannuation fund whilst other people will not. This situation is clearly inconsistent with the current aim of making superannuation available to all on an equal basis.

The exemptions recommended in the majority report on clause 64 may also lead to administrative complexity. The ASFA submission highlighted this point by claiming that attempting to draw a fine line between what is and what is not an unacceptable investment is a complicated task that will give rise to considerable administrative difficulties.

The Committee has also recommended that the sole purpose test be amended to create additional powers designed to complement the exemption under clause 64, thereby giving the ISC greater scope to regulate against avoidance activities. However, this represents a move away from the traditional use of the sole purpose test, in that it will specifically relate to a special provision concerning business viability rather than the core and ancillary purposes of superannuation funds which focus on the generation of income in retirement.

Further evidence on this point was provided by Mr Pooley who claimed that the ISC had originally examined the possibility of combating the type of abuse that clause 64 is designed to prevent by modifying the sole purpose test but had found this approach to be unworkable.

Providing exemptions to clause 64 is also against the principle of diversification in investing superannuation funds. Many of the purchases by the smaller funds, which clause 64 addresses, involve assets which represent a substantial proportion of the total assets of the fund. For example, if a superannuation fund acquires a property from a member and the property then falls substantially in value, the member will have received little or no benefit from their superannuation fund, whereas investing in small parcels of assets can minimise the risk exposure of a fund.

Recommendation:

We recommend that the recommendation proposed in the majority report (Recommendation 4.1) relating to the amendment to clause 64 and the sole purpose test not be agreed to.