

CHAPTER 11:

SPOUSE CONTRIBUTIONS - PUTTING SUPER EGGS IN TWO BASKETS

It is very much recognising ... that they are both contributing in a marriage ... even though one may be in the unpaid workforce. Now her contribution to that marriage is very real.¹

11.1 Throughout the inquiry, the proposition was put to the Committee that spouse contributions would assist women in attaining an adequate level of retirement income. It was argued that allowing a working spouse to split their superannuation contributions with their non-working and/or intermittent working spouse would be one way in which those who fall outside the 30-40 year worklife could have their retirement income needs more adequately met in a superannuation system currently limited by an occupational nexus. Any such proposal requires care to ensure that tax inequities between higher and lower income earners are not exacerbated.

The extension of current arrangements

11.2 The Committee heard evidence on certain business arrangements of the self-employed that allow provision of superannuation for a non-working spouse, and of the proposed use of salary sacrifice arrangements for employee spouse contributions.

Self-employed - business arrangements

11.3 It is possible for a self-employed person operating as a partnership to make superannuation contributions on behalf of a dependant. Dependant includes the spouse and any child of the person.

11.4 Under the *Income Tax Assessment Act 1936* the following persons are eligible for a deduction for contributions made by them to a superannuation fund for the benefit of an employee:

- the employer;
- if the employer is a partnership - any partner in that partnership;

¹ Adamson J, Evidence, p 41

- if the employer is a company:
 1. any person having a controlling interest in the employer;
 2. any person owning shares in the employer, provided the Commissioner of Taxation is satisfied that there is an arm's length business relationship between that person and the employee;
 3. a company which owns a controlling interest in (or in which a controlling interest is owned by) the employer, such as a parent company contributing for the employee of a subsidiary, or vice versa;
 4. a company in which a controlling interest is owned by an individual or company which also owns a controlling interest in the employer, such as a subsidiary contributing for an employee of another subsidiary in the same group.²

11.5 The Australian Society of Certified Practising Accountants (ASCPA) submitted that these provisions, which allow self-employed persons to include their spouse in the superannuation arrangements of the business, are inequitable because the same arrangements cannot be made by the spouse of an employee.³

11.6 Chapter 3 presents an overview of the retirement income status of males and females currently of age pension age. It is clear that women generally have lower retirement incomes. The Committee recognised that the legal ownership of retirement income by the male in a couple may misrepresent the retirement income available to women in couples where income is pooled. However, the Committee has received evidence from women submitting that the ownership of the retirement income by one partner can create inequities during the marriage⁴ and where a marriage is dissolved.⁵

11.7 Therefore, concepts of spouse contributions, broader than those currently available, were put to the Committee as a means of improving access to superannuation for women not engaged in the workforce.

² Section 82AAA(1), (4)

³ Evidence, pp 16, 17

⁴ SW Sub No 71

⁵ See Chapter 13 on Divorce

Salary sacrifice

Salary sacrifice is a process whereby contributions to a employee's superannuation account are made by the employer on a pre-tax basis. This reduces the gross salary subject to tax. For example, an employee receiving a \$60 000 salary package could request the employer to contribute \$10 000 to a superannuation fund by way of salary sacrifice. The employee would receive a gross salary of \$50 000 on which PAYE tax would be payable.

11.8 The ASCPA suggested that these arrangements should be extended to non-working spouses, submitting that 'the employee should be free to negotiate with his or her spouse to breakdown [salary sacrifice for superannuation] into two parts, one going for the benefit of the employed person and one for the benefit of the non-employed person'.⁶ The Society envisaged that the contributions would be vested in separate accounts for each spouse.⁷

11.9 The ASCPA disagreed with the suggestion that such arrangements are only of assistance to high salary earners and submitted that these types of arrangements become a possibility for couples at the stage in life when they no longer have family commitments. The Society recognised however, that the bottom one third of wage and salary earners would be unlikely to be able to access these types of arrangements.⁸

11.10 CBA Financial Services considered salary sacrifice as a means of improving the retirement income savings potential of women with broken workforce patterns, though a number of problems were identified. These included that salary sacrifice:

- may not be attractive to lower income earners;
- may conflict with award provisions;
- may be attractive where the non-working spouse is older than the working spouse and has exceeded the minimum preservation age; and
- attracts payroll tax in some States. This may impact on the costs to the employer, as the contributions to the working spouse may not currently

⁶ Burke F, Evidence, p 18

⁷ Pagnon C, Evidence, p 30

⁸ Burke F, Evidence, pp 18, 19

be taxed, but the contributions to the non-working spouse may take the employer over the payroll tax threshold.⁹

11.11 A further concern on the use of salary sacrifice was identified by the Insurance and Superannuation Commission (ISC). The ISC suggested that salary sacrifice contributions by a working spouse on behalf of a non-working spouse would constitute a form of income splitting. This would reduce the working spouse's taxable income by moving part of their pre-tax income into a concessional tax environment. The ISC believes that while such an arrangement might be attractive on retirement income grounds, the revenue and equity implications need to be examined.¹⁰

Spouse contributions - a bandaid solution or a positive step forward

11.12 Olsberg and Adams argue that 'the superannuation system, the government and society assume that [women engaged in the unpaid caring of dependants] will be provided for by their spouses' superannuation savings'. As a consequence, 'these women are the invisible members of Australia's superannuation funds'. Super-splitting is recommended to enable these 'invisible and silent members to become active participants in the superannuation system'.¹¹

11.13 The benefits of such arrangements identified by Olsberg and Adams include:

- an increased sense of ownership of superannuation savings for the women;
- an increase in privately provided income for women in old age;
- the tangible recognition of the intrinsic economic value of women's caring roles;
- resolving the current problems with divorce and superannuation;
- an increase in women's knowledge of superannuation;
- providing an incentive for the working spouse and the non-working spouse to make voluntary contributions; and

⁹ SW Sub No 42

¹⁰ SW Sub No 37

¹¹ SW Sub No 9

- the government would be demonstrating its commitment to greater access and equity for women in superannuation.¹²

11.14 The Women's Action Alliance (WAA) also identified benefits for women resulting from the implementation of spouse contributions. WAA argued that women at home should not be denied access to vehicles such as superannuation through which they can save for their retirement. Access to superannuation via spouse contributions would reduce the dependence these women have on their spouses and on the age pension.¹³

11.15 The need for reduced dependence of women on their spouses and the age pension was also recognised by the Australian Lifewriters Association. By allowing a fund member to nominate joint accounts, contributions could be split 50/50 with the non-working spouse. This would provide superannuation savings for non-working spouses who otherwise do not gain recognition for their role in the home.¹⁴

11.16 In exploring the concept of spouse contributions before the Committee, the ASCPA presented a position that would require the occupational nexus to be diluted. The Society submitted that not only should 'a non-working party be allowed to contribute, or continue to contribute, to a superannuation fund' but that 'where a woman or one spouse is outside the workforce for a considerable period the spouses should be allowed to share their contributions'.¹⁵ The Society also argued that, as there was a need for all Australians to have some superannuation savings upon retirement, 'it may be beneficial to allow every person who is not employed to contribute', including those living off investment income.¹⁶

11.17 In the longer term, the Society identified spouse contributions as reducing the likelihood of lump sum payments being paid to the surviving spouse in the event of the death of the working spouse. If additional contributions were allowed to be paid to the non-working spouse's account, the accrued benefit may provide a pension on retirement that would alleviate the

¹² SW Sub No 9

¹³ SW Sub No 15

¹⁴ SW Sub No 20

¹⁵ Burke F, Evidence, p 15

¹⁶ *ibid*, pp 16, 25

pressure on the government and social security, whereby 'the amount of the cake can be divided amongst the needy more easily'.¹⁷

11.18 However, spouse contributions are not seen by all as having significant benefit for the majority of women. The Australian Council of Social Service does not endorse spouse contributions as it believes the availability of tax concessions for superannuation contributions on behalf of a lower or no-income spouse (usually female) would only assist higher income families. It would also constitute a substantial cost to revenue.¹⁸

11.19 This question of tax disadvantages for low income earners was also identified by Ms Eva Cox. Ms Cox could not see sufficient justification on equity grounds for implementing a spouse contributions proposal. In summary, Ms Cox informed the Committee that she could 'see no reason why further regressive measures, such as tax splitting at that high income level, should be allowed at the expense of public revenue'.¹⁹

How spouse contributions could work

11.20 The Committee received detailed submissions on spouse contributions from CBA Financial Services and the Life Insurance Federation of Australia (LIFA).²⁰ The Sex Discrimination Commissioner also made some detailed submissions in her oral evidence before the Committee.²¹ These are set out below.

CBA Financial Services (CBA)

11.21 CBA propose that:

- contributions be made to either private or employer-sponsored arrangements;
- such contributions would be tax deductible to the working spouse in the same way they are deductible for a self-employed person. Currently that those deductions amount to \$3 000 plus 75 per cent of any amount in excess of \$3 000 but no more than the Maximum Deductible

¹⁷ Wyatt M, Evidence, p 21

¹⁸ SW Sub No 62

¹⁹ Evidence, p 302

²⁰ SW Sub Nos 42, 70

²¹ Evidence, pp 639-643

Contributions (MDC). CBA stated that the MDC for this purpose could be 67 per cent of maximum employer contributions. This figure was arrived at using the ratio of 167 per cent of the standard married pension to the single pension paid by DSS. The working spouse already has access to 100 per cent of MDC through employer contributions. In addition, the working spouse would now access a further 67 per cent of MDC for the non-working spouse. The age of the non-working spouse at the time the contributions were made would also influence the MDC;

- contributions will be taxable as income for the fund and investment earnings will be taxed in accordance with current arrangements;
- any benefits accruing from these contributions to the non-working spouse must be preserved until 55; and
- any benefits paid from these contributions to the non-working spouse would be taxed in the same way as Eligible Termination Payments. This gives the working and non-working spouse access to the tax-free threshold.²²

11.22 Another question addressed by CBA was whether or not Reasonable Benefit Limits (RBLs) should be adjusted for the non-working spouse taking into account periods when they are in or out of the workforce. CBA thought that the current RBL limits should remain the same, given that such arrangements would be administratively complex and on the basis that the MDC proposed would limit the amount of the benefit accruing during periods of non-employment.²³

11.23 CBA supported its proposal by comparing the net benefits between the superannuation savings as outlined above with the alternative of saving via a bank account. Three scenarios were used with relevant assumptions. The end results showed that the net benefits of the spouse contributions proposal exceeded the net benefits of using a savings bank.²⁴

Life Insurance Federation of Australia (LIFA)

11.24 While some commentators have been critical of the spouse contribution proposal on the basis that it would only be of benefit to high income earners

²² SW Sub No 42

²³ *ibid*

²⁴ *ibid*

wanting to take advantage of the tax arrangements, LIFA argued that there were two more important considerations that necessitated consideration. They were the:

- significant increase to the total pool of superannuation contributions with minimal costs to government revenue, and
- ability of women to achieve superannuation savings in their own name.²⁵

11.25 LIFA commissioned National Mutual to calculate the degree of superannuation savings as a result of spouse contributions. A number of specifications were provided, including the deductibility and taxing of contributions, as well as assumptions, including that such contributions are only made by couples with income above Average Weekly Earnings (AWE) and contributions are treated for deductibility purposes as being from the employer.²⁶

11.26 The results from the modelling indicate that around 60 000 couples would make contributions. Such contributions would increase fund balances by \$323 million in 1995 and \$12 631 million by 2020. Over the same period, it is forecast that cost to Government revenue would decrease from \$91 million to \$48 million.²⁷

11.27 While this would boost national saving, it should be noted that government age pension costs would be minimal as most of the selected couples are not entitled to the age pension. Any tax concessions are offset by tax receipts (although such receipts are delayed until the beneficiary retires or resigns).²⁸

11.28 In discussing their proposal with the Committee, Mr Cole stated that 'most women will at some stage work and be members of a superannuation scheme in their own right'. It was recommended that any pre-existing accounts be utilised for spouse contributions on behalf of the now non-working spouse before any new accounts were opened. A requirement for new accounts to be opened would only exacerbate the already existing small amounts problem.²⁹

²⁵ SW Sub No 70

²⁶ *ibid*

²⁷ *ibid*

²⁸ SW Sub No 70

²⁹ Evidence, p 258

The Sex Discrimination Commissioner

11.29 The Commissioner recommended that when a person left the workforce temporarily to have and/or to look after children or other dependants, any existing superannuation savings could be rolled over into the working spouse's fund with the following stipulations:

- a separate account for the non-working spouse be maintained;
- fifty per cent of the working spouse's contributions be paid to the account; and
- insurance cover be maintained.³⁰

11.30 The advantages of such an arrangement included:

- the continuation of insurance cover for both partners;
- a continued accumulation at an equal, if reduced, rate;
- no additional cost to the employer as only a single payment would be remitted to the fund;
- no negative affect on the national savings strategy;
- a flow-on effect in terms of superannuation and divorce;
- the ability for the individual upon recommencing work to make full payments to their account or rollover the savings to a new employment-related fund.³¹

11.31 The Commissioner informed the Committee that this proposal should be introduced in the year 2002. 'I am not of the view that this would be a useful thing to do until the level of contributions has reached an adequate level'.³² By the year 2002, Superannuation Guarantee contributions will be 15 per cent.

11.32 The Commissioner was also strongly of the view that the proposal be limited strictly to the compulsory contributions. She explained that:

[her] reason for that view is that one of the great criticisms in relation to superannuation is that there are too many additional benefits for people who

³⁰ SW Sub No 89

³¹ *ibid*

³² Evidence, p 639

are on higher incomes in terms of tax breaks ... what I am proposing is a mechanism that would avoid turning superannuation into an income splitting mechanism for tax purposes.³³

11.33 This position was supported by Mr Vernon of Jacques Martin Pty Ltd (JMI) who argued that 'if you have open slather with that arrangement, you are going to have a skewing of the tax concessions in the community to those who are higher paid'.³⁴ JMI said that restrictions may need to be imposed,³⁵ and suggested that the spouse contribution provision should be restricted as a way of keeping tax concession costs under control, and that the Superannuation Guarantee might be an appropriate mechanism.³⁶

Would it work?

11.34 JMI informed the Committee the actual split of the contribution between two accounts would be a simple process for the administrators. On receipt of a cheque for payment, details of what amounts should be paid, and to whom, needed to be attached. Mr Vernon told the Committee that administration costs would not increase significantly as a result of running two separate accounts for the working and non-working spouse. 'Certainly the costs would be no higher than if a credit union, bank or building society were running a similar account. They would be at least as low, if not lower'.³⁷

11.35 Mr Vernon indicated that if an individual account existed then other superannuation related benefits, such as death insurance for the non-working spouse, would apply. 'It is important that these people have access to ... the attached insurance if they want it. Without it, the death of the spouse will cause enormous hardship, not only emotionally but also in raising a family'.³⁸

³³ Evidence, pp 639, 640

³⁴ Evidence, p 63

³⁵ SW Sub No 17

³⁶ *ibid*

³⁷ Evidence, p 57

³⁸ Evidence, pp 58, 59