



**Submission to the
Senate Legal and Constitutional Affairs Committee**

**with respect to the
Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2006**

**Superpartners Pty Ltd
19th January 2007**

Superpartners Pty Ltd provides administration services to a number of large industry superannuation funds with a combined total of more than five million member accounts.

We welcome the opportunity to make this submission to the Committee with respect to the proposed recovery of superannuation contributions by bankruptcy trustees.

This submission is not confidential.

We wish to take this opportunity to highlight some potential issues with respect of consideration of fees and taxes that may have been deducted by the superannuation fund in respect of the contribution. These matters are discussed below.

(1) Fee or Charge in respect of the Contribution -

Proposed subsection 128B(5A)(b)(ii) states "a fee, or a charge, in respect of the contribution". The same wording also appears in proposed subsection 128C(7A)(b)(ii).

We are concerned as to the interpretation of the wording "in respect of the contribution". Most regulated superannuation funds have fairly simple fee structures. However, there are a number of different fees that could be deducted, and not all of them are attributable to specific contributions. Most charge a weekly or monthly administration fee, which may be a fixed dollar amount or a percentage of the member's account balance. Some funds also charge a contribution fee, which is deducted from each contribution received. There are also other fees for additional services, such as investment choice switches, benefit payments and 'payment splits', 'flags' and 'requests for information' under the Family Law (Superannuation) Regulations 2001. In addition to these fees, many regulated superannuation funds also provide insurance to their members under a group policy. Each insured member will have a weekly or monthly insurance premium deducted from his or her superannuation account.

We see some ambiguity with the proposed wording, as to which fees or charges are in respect of any particular contribution.

By way of example, a new member to a superannuation fund starts with a zero balance. Contributions are then made for six months. During this time, a weekly administration fee and weekly insurance premium are deducted. A further fee is also deducted in respect of each contribution received. In addition to this, during the six-month period the member makes an investment choice, and consequently the member investment choice fee is deducted from the member's account.

In the above example these fees would be deducted from the member's account balance. The account balance is made up of contributions (less Tax) and any interest earned (which could be positive or negative). For this legislation to be effective and fair to the trustee of the superannuation fund, all of the above mentioned deductions should be excluded from the

recoverable amount. We are uncertain as to whether the proposed wording facilitates this, as it says “in respect of the contribution”. These deductions are made due to membership of the regulated superannuation fund, and are deducted from the member’s account balance.

(2) Payments to the trustee of the bankrupt -

In respect of new subsections 128B(5A) and 128C(7A).

In summary, these new subsections state that if an amount paid by the trustee of the eligible superannuation plan in respect of a Section 139ZQ notice exceeds the amount debited (for fees, charges and taxes), the trustee in the transferor’s bankruptcy must pay to the trustee of the eligible superannuation plan an amount equal to the amount so debited.

We are unsure as to the intention of these subsections. Are these subsections simply provisions to address an overpayment by the trustee of the eligible superannuation plan, or is the intention that the trustee of the eligible superannuation plan will pay the full amount of the recoverable contributions, and then the trustee of the bankrupt will repay amounts in respect of fees and charges and taxes to the eligible superannuation plan?

If these subsections are to address an overpayment made by the trustee of the eligible superannuation plan, then we do not have any objection to them.

However, if the intention is that the trustee of the eligible superannuation plan will pay the gross amount of the recoverable contributions to the trustee of the bankrupt, and then the trustee of the bankrupt will pay back any amounts so debited (for fees, charges and taxes), we do not see this as a workable solution.

In such case the trustee of the eligible superannuation plan and potentially other members of the plan would be disadvantaged as amounts would be paid to the trustee of the bankrupt that have already been deducted for other purposes (eg administration fees, insurance premiums, taxation).

A workable model would be that the trustee of the eligible superannuation plan pays to the trustee of the bankrupt the recoverable contributions **less** any amounts debited. Under this method one payment is made, and neither the trustee of the eligible superannuation plan or the trustee of the bankrupt is disadvantaged.

(3) Other issues –

The Bill does not appear to limit the amount recoverable to the total amount held by the eligible superannuation plan for the member. It is possible that the amount held by the eligible superannuation plan could have been reduced as a result of negative investment earnings, or the member could have cashed part of their benefit, or transferred part to another regulated superannuation plan.

We acknowledge that accounts can be subject to a superannuation-account freezing notice, however, this will not address the possibility of negative returns during the period. Also it is possible that a member may have cashed or rolled over part of their benefit before the notice is received.

If a member’s account balance were insufficient to cover the amount to be repaid, the shortfall would have to be paid from other monies held by the trustee of the eligible superannuation plan. This would have an adverse impact on the other member’s of the eligible superannuation plan, as such amount would have to be paid from fund earnings that otherwise would have been distributed to other members of the plan. In our view, such subsidisation is not appropriate.

We hope that the final legislation will address this matter.

Superpartners appreciate the opportunity to comment on this Bill, and we hope that you find our comments of some assistance when finalising this legislation.

If you have any queries in respect of this submission, please contact David Hodges on (03) 9200 4670 or via e-mail at dhodges@superpartners.com.au