

Workplace Savings NZ

Te māngai penapena ā-mahi

10 February 2010

Clerk of the Committee
Finance & Expenditure Committee
Select Committee Office
Room 10.04, Bowen House
Parliament Buildings
WELLINGTON

To the Chair of the Select Committee,

WORKPLACE SAVINGS NZ Submission on the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Bill

We wish to submit the attached in response to the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Bill (the Bill).

Workplace Savings NZ is a national, not-for-profit, apolitical membership organisation.

Our membership comprises 100 major workplace superannuation and KiwiSaver schemes and another 50 organisations and individuals representing the various product and service providers for workplace savings arrangements. We have recently reviewed the principal goals and objectives of our organisation and changed our name from ASFONZ to better reflect our objectives.

From the perspective of assets under management, the membership of Workplace Savings NZ covers 90% of retirement savings held through workplace retirement saving arrangements (i.e. Corporate and Master Trust superannuation schemes and KiwiSaver).

Workplace Savings NZ's objective is to be the Voice of Workplace Savings; advancing the sustainable, effective, and efficient delivery of workplace savings outcomes for all involved – including the core workplace superannuation scheme members who remain at the heart of the organisation. We do this through:

- Advocating – advancing legislative and public policy initiatives beneficial to workplace savings and participation in the workplace savings industry, making submissions, engaging with policy-makers and officials and issuing media commentary to advance those causes.
- Education – promoting trustee, employer and member financial and regulatory education through dedicated training programmes, newsletters and special interest seminars.
- Networking – providing trustees, employers and service providers involved in workplace superannuation with a regular forum for sharing ideas and information on industry matters.

- Promotion – publicising the benefits of workplace savings, and helping to improve public confidence in workplace savings.

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I would be pleased to discuss our comments or answer any queries in relation to the submission.

Thank you for the opportunity to make this submission.

Yours sincerely



Bruce Kerr
Executive Director

Workplace Savings NZ

Submission to the

Finance and Expenditure Select Committee

on the

**Taxation (Annual Rates, Trans-Tasman Savings
Portability, KiwiSaver, and Remedial Matters) Bill (“the
Bill”)**

February 2010

The Workplace Savings NZ Submission

Summary

Workplace Savings NZ wishes to commend officials for giving interested parties, such as ourselves, an opportunity to take part in a process of consultation and discussion on various proposals during the drafting phase of the Bill. We believe that this has resulted in a Bill that proposes legislation that is generally practicable from industry providers' perspectives while putting into effect government policy that is of benefit to consumers.

Workplace Savings NZ confirms general support of the measures introduced covering:

1. Trans Tasman portability;
2. KiwiSaver:
 - 2.1. Clarification of enrolments if under 18;
 - 2.2. Consistency of rules, PAYE and KiwiSaver;
 - 2.3. Provision of annual report via hyperlink.

Our submission focuses on some issues that are primarily of a technical nature. We have, however, where we believe that it would be helpful and is appropriate, made suggestions that are of a policy nature.

We have, firstly, commented on a number of aspects of the Bill in relation to the topics mentioned above where we feel that clarification of wording or some changes would enhance the workability of the resulting legislation. Our comments are aimed at removing uncertainty for providers and consumers.

Secondly, we have commented on an issue that was included as an unannounced change to the KiwiSaver Act 2006 (included in Part 4 of the Taxation (International Taxation, Life Insurance and Remedial Matters Act 2009, as the Bill was reported back to the House) that interested parties did not get an opportunity to comment on at the time. We draw attention to some shortcomings of that legislation change that we believe were inadvertently introduced and submit that this Bill provides an appropriate mechanism to remedy the situation.

The Submission

1. Trans Tasman portability

- 1.1. Workplace Savings NZ is pleased to note that the basis proposed is as simple as appears possible, aimed at allowing consolidation of individual's retirement savings with a minimum of complications and, therefore, cost – to both savers and providers. The following comments indicate where we feel that this principle can be carried further or where we see some potential difficulties.
- 1.2. We note that "Complying Funds" (as defined under the KiwiSaver Act 2006) are not currently included. As Complying Funds essentially operate in the same way as KiwiSaver schemes, it would be logical for them to be included. We encourage the extension of this facility to be included in future discussions with Australian officials;
- 1.3. We also note that the "contributions cap" currently in place in Australia is to be applied to amounts transferred from KiwiSaver schemes to Australia. As we see little scope for abuse of the Australian tax system from excessive contributions to be made in this process we suggest that exempting such transfers is discussed with Australian officials at some point in the future. It is not likely to be an issue in the immediate future but may be so as savers build their KiwiSaver balances;
- 1.4. In general, the additional data that KiwiSaver providers would need to keep in respect of transfers would be the "amount transferred", which does not include investment returns (whether positive or negative) relevant to periods following the date the funds are transferred.
 - 1.4.1. We support the simplicity of this approach as it minimises costs for providers, thereby encouraging them to provide the service and for a minimal fee. In the majority of cases few system changes would be required to enable a record of this amount to be maintained;

- 1.4.2. However, we note that sections 75 & 76 of the Bill involve "net" amounts to be paid, allowing for investment returns relevant to periods following the date the funds are transferred. This potentially undermines the simplicity principle and could, in many cases, require registry system changes of a significant and costly nature;
- 1.4.3. The mistake that the provisions of Subpart 4 of the KiwiSaver Act 2006 (sections 59A to 59D) are intended to assist in remedying might not be discovered for many years after a transfer has taken place. A provider would therefore be required to maintain additional records to provide for this (the amount of the subsequent investment returns), even though in our view the instances of such a record being needed would be rare;
- 1.4.4. We suggest that it would be preferable to retain the simplicity of the "amount transferred" (disregarding subsequent investment returns) in these sections if this is possible, thereby avoiding the need for the additional record keeping;
- 1.4.5. We further suggest that this can be achieved by:
 - 1.4.5.1. deleting the words "the net value of" from the proposed new sections 59B(2)(b)(iii), 59D(2)(b) and 59D(2)(c);
 - 1.4.5.2. adding to section 59D(2)(c) a restriction on the amount to be paid not exceeding the member's accumulation;
 - 1.4.5.3. adding at the end of section 59D(4) "and the amount that has been paid under subsection (2)(c)."
- 1.5. Section 76 provides for the return of an amount, in specified circumstances, to the transferring Australian scheme.
 - 1.5.1. We see that this could be problematic:
 - 1.5.1.1. if the Australian scheme has closed; or
 - 1.5.1.2. if the Australian scheme is not compelled to accept any returned funds.
 - 1.5.2. We note that a return of a transferred benefit to NZ in similar circumstances could cause problems for the KiwiSaver provider, as the member's account would have been closed when the funds were transferred out and the person would not be eligible to open a new account as they would not be a NZ resident.
 - 1.5.3. It is suggested that the words "or to such other Australian complying superannuation scheme as is nominated by the person in respect of whom the transfer was made." are added at the end of section 59D(2)(c) to provide for all such situations.
- 1.6. Section 80 introduces a new section 2B into Schedule 1 of the KiwiSaver Act 2006:
 - 1.6.1. This section states that fees are to be deducted first from the net value of amounts not transferred from Australia. No specific type of fee is specified, implying that all fees must be deducted from amounts not transferred from Australia until such amounts are exhausted;
 - 1.6.2. In practical terms this can be achieved where the fee in question is a fixed dollar amount;
 - 1.6.3. However, most schemes operate on a unitised basis with ongoing fees, particularly those related to investment expenses, deducted from the value of the fund prior to unit prices being determined. The total value of the member's accumulation, which will include any amount transferred from Australia, will be determined with reference to the number of units held by the member and the unit price from time to time;
 - 1.6.4. It will be seen that fees applied in this way will apply to all elements of the member's accumulation equally and at the same time. To suggest that the provider must deduct the fee for investment services relating to the investment of the amount transferred from Australia from any source other than that amount seems to be illogical;
 - 1.6.5. We submit that it is also unreasonable and totally impractical. Costs associated with attempting to comply with such a requirement would probably preclude providers offering this service;
 - 1.6.6. Workplace Savings NZ does recognise, however, that this clause is designed to protect the value of the amount transferred and to ensure that it is not reduced by the disproportionate allocation of fees. We suggest that this can be achieved by rewording section 2B to say that fees cannot be deducted from the amount

transferred from Australia to a greater extent than in proportion to the total value of the member's accumulation in the scheme at the time.

1.7. Section 80 also introduces a new section 4B into Schedule 1 of the KiwiSaver Act:

1.7.1. This introduces a cross reference to Australian legislation for the term 'retirement'. We suggest that it would be preferable to define retirement in this section 4B, thus avoiding the cross reference. We recognise that this might then lead to an amendment being required if the Australian Act is changed at some future date;

1.7.2. The section also refers to "necessary modifications" for KiwiSaver scheme trustees and we enquire what this might cover – what sort of modifications were in the drafters mind? Clarification is highly desirable;

1.8. Section 72 introduces the term "Australian complying superannuation scheme", also as defined in Australian legislation. We do not see this causing the problems mentioned in 1.6.1. above as long as the NZ provider is able to rely on a statement from the Australian scheme that they meet the definition;

1.9. We strongly believe that if NZ is serious about encouraging the consolidation of retirement savings accounts back to NZ, then further consideration needs to be given to aligning tax rates on investment income with the rate payable in Australia.

2. KiwiSaver;

2.1. General clarification of enrolments for those under age 18 is welcomed. In addition:

2.1.1. Section 74 refers to those aged 16, with no guardian, being able to enrol as if they are aged 18. How is a provider to establish whether or not the person has a guardian? If the provider is able to rely on a statement by the applicant that they have no guardian in these circumstances it would be helpful to make this clear.

2.1.2. We agree that those over age 16 should be regarded more as adults than those under age 16 and believe that their treatment should be more consistent with this principle. We also believe that the savings habit should be introduced at the earliest opportunity when people join the workforce. In our view this means that people aged 16 who wish to contribute through the workplace to their KiwiSaver account should be encouraged to do so by making them entitled to compulsory employer contributions (exempt from ESCT) and member tax credits;

2.2. Consistency of rules, PAYE and KiwiSaver is supported.

2.3. Provision of annual report via hyperlink;

2.3.1. we support this recognition of improving technology;

2.3.2. it would seem logical to extend this facility to all schemes registered under the Superannuation Schemes Act 1989. This could be achieved by amending section 17 of the Superannuation Schemes Act 1989 in the same way as has been proposed to amend the KiwiSaver Act. The KiwiSaver Act would then not need to be amended to introduce the required outcome.

3. KiwiSaver Act 2006 – Exempt Employer Status

3.1. The Taxation (International Taxation, Life Insurance and Remedial Matters) Act 2009 was enacted in October 2009. Amongst many other things, the Act proposed amendments to the KiwiSaver Act 2006. Included in those amendments was a grandfathering of exempt employer status eligibility that was available under Section 25 of the KiwiSaver Act. The grandfathering has the policy intent of preventing employers establishing new schemes to avoid application of the automatic enrolment rules. The amendment to Section 25(1)(B) of the KiwiSaver Act introduced a sunset clause for the exemption to apply;

3.2. Workplace Savings NZ is opposed to the sunset mechanism as a concept, and are very disappointed that this particular amendment was incorporated in the Bill without any publicity or prior consultation;

- 3.3. When the KiwiSaver Act was introduced, Workplace Savings NZ (then known as ASFONZ) was at the forefront of initiatives aimed at allowing employers participating in workplace savings arrangements other than KiwiSaver being able to avoid the cost and inconvenience of automatic enrolment, provided certain key conditions were satisfied. The end result was a workable compromise, with employers who were committed to providing workplace savings arrangements with broadly similar contribution terms being relieved from also having to deal with automatic enrolments, but with all employees eligible to opt in to KiwiSaver regardless;
- 3.4. We wrote to the Minister of Revenue last year to signal our intention to lobby for a repeal of this particular change in the future, at the earliest opportunity. Our primary concern is the inflexible nature of the sunset provision as introduced. As worded, the new section 25(1)(BB) requires the relevant participation agreement to have been entered into prior to the date the Tax Act in question received the Royal assent (October 2009);
- 3.5. We submit that the current Bill is an appropriate opportunity to seek remedial action on this issue;
- 3.6. There are three key situations of concern:
 - 3.6.1. where there is a need for a participation agreement to be replaced as a result of merger and acquisition activity (as opposed to such an agreement simply being amended). The replacement agreement will fall outside of the sunset relief and the employer concerned will cease to have the benefit of exempt employer status moving forward;
 - 3.6.2. where all members of an existing workplace arrangement are transferred to another scheme under Section 9BAA of the Superannuation Schemes Act 1989 (a mechanism that facilitates the bulk transfer of members from one scheme to another, usually as a result of merger and acquisition activity, but also in circumstances where an employer participating in a master trust arrangement looks to change that arrangement). Exempt employer status will again be lost;
 - 3.6.3. where an employer is a participant in a master trust superannuation scheme and the employer (or its employees) are not satisfied with the performance or service of the provider. Employers who have a participation agreement with one provider that qualifies the employer for exempt employer status will have a strong disincentive to migrate that arrangement to a new provider. Such employers would not be able to retain exempt employer status with the new scheme provider, even though the participation agreement might be on identical terms as previously applied or may even be more favourable for the new employees affected;
- 3.7. A mechanism is included at Section 35 of the Superannuation Schemes Act 1989 (relating to complying superannuation funds) that recognises the concept of a 'successor participation agreement'. That concept removes what would otherwise be a complication in merger and acquisition activity involving an employer with an existing workplace superannuation scheme arrangement. It does this by allowing an agreement that succeeds and replaces an existing participation agreement to effectively qualify the employer or workplace savings arrangement for the same relief as applied prior to the replacement;
- 3.8. We would suggest that a similar successor participation agreement concept be introduced as a logical enhancement to last year's amendments, so as to preserve relief currently enjoyed by a limited number of employers. To do otherwise is likely to cause disruption and complication for employers looking to change their participation arrangements, and limits competition between master trusts providers. Ideally, the successor participation agreement concept should be extended to allow exempt employer status to extend to equivalent arrangements entered into with an alternative scheme provider.

Submission Ends