

30 August 2007

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

**ASFONZ SUBMISSION ON SUPPLEMENTARY ORDER PAPER No 130
Related to the Taxation (Annual Rates, Business Taxation, KiwiSaver, and
Remedial Matters) Bill**

We wish to submit the attached in respect of the Supplementary Order Paper No. 130 released on 16 August 2007.

ASFONZ is an independent, national, not-for-profit membership organisation founded in 1969. Its current membership comprises around 100 major workplace superannuation schemes and around 50 organisations and individuals representing the various product and service providers for workplace superannuation.

The mission of ASFONZ is to promote workplace superannuation in New Zealand.

ASFONZ seeks to achieve that mission through:

- 1 **Advocacy** – being the recognised voice for all employers and trustees involved in workplace superannuation, through:
 - (i) advocating legislative and public policy initiatives beneficial to the industry;
 - (ii) making submissions and commentary on existing legislative and public policy initiatives;
 - (iii) issuing regular press releases and other public commentary on matters of wider concern or interest to members; and
 - (iv) staying in regular contact with responsible Ministers, regulatory and industry bodies, the Retirement Commissioner and Government Departments to project, promote and advance members' interests.
- 2 **Education** – promoting trustee, employer and member education through dedicated training programmes, newsletters and special interest seminars.
- 3 **Networking** – providing trustees, employers and service providers involved in workplace superannuation with a regular forum for sharing ideas and information on industry matters.

Contact:

Bruce Kerr
Executive Director, ASFONZ
PO Box 19-194, Wellington, NZ
Ph. (04) 381 3382
Fax (04) 381 3392
Mob. (027) 284 0481
Email bruce.kerr@asfonz.org.nz
Web Site www.asfonz.org.nz

Thank you for the opportunity to make this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read "John Melville". The signature is fluid and cursive, with a long, sweeping underline that loops back under the first part of the name.

John Melville
Chairman

ASFONZ

(The Association of Superannuation Funds of New Zealand)

Submission to the

Finance & Expenditure Select Committee

on the

Supplementary Order Paper No. 130 ("SOP")

related to the

**Taxation (Annual Rates, Business Taxation,
KiwiSaver, and Remedial Matters) Bill ("Bill")**

August 2007

Summary of our submission

The primary concern of ASFONZ with respect to the SOP relates to the proposed rules governing offsets to the compulsory employer KiwiSaver contributions in respect of specified superannuation contributions. The Government's policy intention of giving recognition to those employers currently making specified superannuation contributions to a registered workplace superannuation scheme on behalf of their employees, and allowing those contributions to be off-set against any legislated compulsory KiwiSaver employer contributions, is not being delivered by the changes proposed by this SOP.

Detailed comments

Clause 219 – the application of Other Contributions

1. The SOP recommends replacement of the proposed section 101D(2)(c). Section 101D sets out the general rule in relation to the compulsory employer contribution amount. The proposed section 101D(2)(c) deals specifically with the rule relating to the 'other contributions' offset allowed against the compulsory employer contribution in the proposed section 101D(1).
2. The SOP introduces a 'class of employees' who will specifically be denied the opportunity to obtain a windfall gain (or "double-dip") as a consequence of legislated compulsory employer KiwiSaver employer specified superannuation contributions. In the first instance those who are in employment as a Member of Parliament, a judicial officer, or a sworn member of the Police are so affected. The proposed section 101D(2)(c)(i)(B) in the SOP also proposes the ability for additional 'classes of employees' to be prescribed. We have specifically discussed the proposed Section 230A below.
3. Many employers sponsor existing registered workplace superannuation schemes, and in many instances partner their staff by making specified superannuation contributions at a level well in excess of the proposed compulsory KiwiSaver employer contribution of 4%. In our view and as previously submitted, the current wording of the Bill risks penalising those employers, and the proposed changes under the SOP do nothing to alleviate the concerns of employers in general over the possibility of legislatively sanctioned double-dipping by employees in respect of employer funding towards their retirement.
4. The proposal to exclude a particular class of employees who will be denied the ability to double-dip potentially available to any other class of employees, and the corresponding relief from exposure to double-dipping by their state sector employer, is inconsistent with the policy of prescribing rules of general application for when specified superannuation contributions will count for offset purposes. The blanket relief provided is, however, consistent with ASFONZ' position that all specified superannuation contributions by employers ought to count for offset purposes, with no rules imposed relating to grand-parenting of that relief or other pre-conditions regarding vesting. ASFONZ would like to see the blanket exclusion from double dipping proposed for any employee who is a Member of Parliament, a judicial officer, or a sworn member of the Police extended to every employee, meaning the "other contributions" definition could end before the 4 listed conditions. The clear understanding ASFONZ has gleaned from its membership is that doing otherwise will result in employers withdrawing support for workplace superannuation arrangements, in whole or in part, with a likely **reduction** in the overall level of employer contributions towards employee retirement savings.
5. In our submission on the Bill, we highlighted the point that the 'other contributions' offset allowed against the compulsory employer contributions in the proposed section 101D(2) of the KiwiSaver Act was problematic and unduly limited in its scope. It is unfortunate that the SOP has not addressed some of the acknowledged drafting deficiencies in the original wording when replacing the offending provision. For ease of reference, in our original submission ASFONZ submitted that:

5.1 paragraph (i) of the 'other contributions' definition be expanded to accommodate employees employed after 1 April 2008, but on terms determined prior to 1 April 2008 or at the very least on terms determined prior to the Bill coming into effect;

5.2 paragraph (ii) be amended to confirm that an employer is able to benefit from the ability to off-set if it was providing its employees in general with access to superannuation arrangements as at 17 May 2007. As drafted, the provision implies that only contributions to a scheme in respect of an employee to whom the employer was providing access to that scheme as at 17 May 2007, will qualify.

5.3 in addition to the presumably unintended early grand-parenting of qualifying employees, by limiting the criterion to contributions made to a particular scheme as at 17 May 2007, the offset rules lock in employers to existing arrangements. This penalises employers where existing arrangements are terminated for reasons beyond their control, suppresses competitive activity in relation to master trusts, with employers strongly incentivised not to change providers, and is contrary to the policy of portability that underpins the KiwiSaver Act. ASFONZ notes this concern is similar to that previously expressed in relation to complying superannuation fund participation agreement criteria that has now been addressed (to an extent) through reference to successor agreements, and as a minimum recognition of successor schemes is required.

5.4 paragraph (iii) is again unduly restrictive in its grand-parenting approach. Greater flexibility should be introduced to recognise superannuation contributions made by the employer pursuant to any arrangement agreed by the employer prior to 1 April 2008. In that way, consistent with the submission at 5.1 above, long term collective agreements can be given proper effect in the manner contemplated under the Employment Relationships Act.

5.5 paragraph (iii) should also be expanded to allow offsetting for employer contributions paid through allocations from scheme reserves to minimise the extent of double-dipping that might otherwise result in windfall gains for members of over-funded employer superannuation schemes.

5.6 paragraph (iv) needs amendment to overcome the extent to which existing generous employer subsidisation arrangements involving vesting scales might fail to be recognised for offsetting purposes. The amendment proposed is that employers be given the power to fully vest in an employee all or part of any contributions to a registered superannuation scheme or fall in from reserves that would otherwise qualify under paragraphs (i) to (iii), notwithstanding the provisions of any relevant trust deed or participation agreement or restrictions that might otherwise apply at law. In this way, employers have the option of accelerating what for many will be a discretion only available to them when a resignation benefit is paid IF the employer wants relevant contributions to offset its compulsory contribution obligation.

6. We take this opportunity to affirm the above points. In addition, from subsequent feedback from our membership it seems clear that the offset condition of most concern is that relating to the exclusion of specified superannuation contributions that are subject to vesting. As an example, an employer whose contributions are subject to a 10% per year vesting scale for the first 10 years would be unable to apply any offset relief until 10 years of contributions have elapsed – even though contributions for the final year will have been 90% vested. ASFONZ submits that two further options for making this particular offset condition more equitable should be considered:

6.1 The first would be to apply a similar rule as has been used at section 25 of the KiwiSaver Act for exempt employer criteria, whereby vesting scales of up to 5 years are permitted.

6.2 An alternative would be for paragraph (iv) to provide for an offset "to the extent that" specified superannuation contributions vest in the employee –

meaning that in the example above, 90% of the employers contribution would count towards the offset in the 9th year of contributions.

Clause 230A – Regulations relating to compulsory employer contributions

7. With respect to the ring-fencing of a specific group (namely; Member of Parliament, a judicial officer, or a sworn member of the Police) from the opportunity to double dip, ASFONZ has already questioned the rationale for not also recognising, and similarly ring-fencing, employees of those other employers who currently contribute specified superannuation contributions to a registered workplace superannuation scheme at paragraph 4 above. In addition, the mechanism for prescribing further classes of employees as falling within that grouping is overly restrictive, and uncertain in its application. There is considerable confusion in the workplace savings sector as to what is meant by the condition requiring terms relating to the employer's contributions being determined by a person "independent" of the employer and the class of employers.

ASFONZ submits that paragraph 230(A)(2) needs amendment to accommodate any employer unable to prevent compulsory employer contributions increasing their employer contributions in relation to a 'class of employees'. An example is where the Superannuation Schemes Act 1989 imposes the need for member consent for changes that affect member benefits, which will be the case in some circumstances in relation to any change reducing an employer's contribution in respect of an existing scheme member to offset its liability under compulsory KiwiSaver employer contributions. A further example is where collective agreements have already been reached that will require specified superannuation contributions from an employer for employees employed after 1 April 2008. This deficiency in the proposed section 230A could be addressed by simply deleting the concluding words "because terms relating to their employer contributions are imposed by a person independent of the employer and the class of employees", and replacing the earlier words "may not prevent" with "is unable to prevent".

Other Issues

8. ASFONZ submits that the proposed change to clause 144 relating to members being able to require withdrawals for complying superannuation funds to be paid by way of lump sum is superfluous. Whilst from a policy perspective we have no issue with the concept, our concern is that imposing this further condition to the complying fund rules may result in existing complying funds no longer satisfying the statutory criteria, putting those schemes to the expense of effecting an appropriate deed amendment and updating disclosure documents, as their existing terms may be insufficient to evidence the new rule which will have been left implicit in many instances. Relief is required to imply that condition into the terms of any complying superannuation fund trust deed and related disclosure document in existence on the date the Bill comes into force.
9. In our original submission ASFONZ expressed reservations over the emphasis given to participation agreements under the Bill, and that emphasis is amplified under the SOP with the requirement to lodge participation agreements with the Government Actuary. Other than the logistical impact of filing under the proposed transitional provisions, we have no particular concern with the filing requirement if the emphasis on participation agreements is to remain – although we remain of the view that the key policy objective of a member needing to lock in savings until retirement is more simply addressed by removing the requirement for participation agreements altogether.
10. ASFONZ' concern with the new rules regarding complying superannuation funds is with the proposed extension to the content of superannuation scheme annual reports. For schemes involving a multiplicity of employers, including master trust

schemes, the requirement to include a summary of changes to any participation agreement is problematic, unless (as a minimum) the requirement is restricted to the content of the form of annual report sent to members affected by the change. We are aware of one scheme with in excess of 800 employers involved, the bulk of whom are unrelated. Requiring such a summary to be included will result in the potential for a significant increase in the content of (and consequently the cost of preparing and distributing, usually at members' expense) such annual reports, with much of that additional content completely irrelevant to the bulk of members receiving it. Further, the ability for employers to confidentially set the terms of their incentivisation arrangements for their employees is completely undermined by this proposal. This aspect of the SOP also contradicts the hard-won provisions in the Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 1998 in terms of which, provided other conditions are met, participation agreements need not be lodged with the Registrar of Companies so as to be available to the general public.

ASFONZ submits that the requirement for additional annual report content should be reworded so that there is an obligation placed upon trustees to provide a summary of changes to any participation agreement to those members covered under the relevant participation agreement, with the trustees required to provide a full set of such summaries to the Government Actuary when forwarding the full annual report. This would help address what is currently an area of some uncertainty in respect of current annual reporting obligations in a manner consistent with the presumed policy intent behind the reform proposal that minimises any consequential inefficiency.

11. ASFONZ welcomes the clarification that has been provided under the SOP in relation to the timing of eligibility for member tax credits.