



List of Outstanding Issues for the Superannuation Taskforce

1. Matters passed by the ASFPNG

1.1 Housing

STATEMENT of POLICY

Section 90 (as amended) of the Superannuation Act allows a member to withdraw 60% of their total contributions as a housing advance after contributing to an approved superannuation fund for 5 years or more. The Act specifically states that the housing advance must be utilized for a member's principal place of residence

The Housing Guidelines enables a housing advance to be used for purchasing a new home, constructing / building a home, purchasing titled land on which to construct a home or to carry out repairs or improvements to a home already owned by the member. It also allows the purchase of specific items deemed a necessity as part of owning or building a home.

GUIDELINES

PURCHASING A HOME

- Documents required are a letter of offer from a vendor or vendor's agent and a reciprocating acceptance of offer from the member. Evidence of property ownership i.e title deed must also be produced.
- Cheque is payable to the vendor (if amount is sufficient for out right purchase) or to the bank or an approved financial institution under the Banks & Financial Institution Act if it is to be used as equity financing. This is conditional upon the bank or financial institution confirming approval of a housing loan to settle the property.

A cheque will not be paid to a vendor's agent (e.g. a real estate agent) for a deposit on a house without proof of secured funding in place to complete the purchase.

CONSTRUCTING A HOUSE

- Member must own the land by of customary ownership or as a state leaseholder.
- Construction of a future principal place of residence on customary land while living away from the village in employer provided or rented accommodation is allowed
- Improvements / renovations to or completion of an existing principal place of residence on customary land while living away from the village in another province. (Note: Includes members who have obtain previous advances (under former legislation and yet to complete their homes)
- Improvements / renovations: - amounts from K1000 .00 and above will constitute substantial improvements with detailed break ups of the material purchases or building services to be provided.

HOUSE BUILDING/ HOME IMPROVEMENT / RENOVATIONS BY A CONTRACTOR / BUILDER

Subject to the maximum entitlement being sufficient to cover the request for housing advance, payment may be structured in a series of payments as follows;

- Cheque(s) paid direct to the supplier(s) for payment of the building materials,
- One cheque being 50 % upfront payment to the builder for labour costs
- Balance of 50 % paid at the completion of the work.

It will be up to the member to decide if retention (usually 5 – 10 %) of total construction costs is to be allowed to cover defects liability period. At the expiry of this defects liability period the retention

balance is released to the builder. (The intention of this guideline is to protect the interest of the member and keep the builders / contractors honest). This intent must be clearly stated by the member at lodgement of application.

A company search is to be carried out on each contractor to determine if the company is legitimate and that the member does not own or have a controlling interest in it.

OTHER ALLOWABLE ITEMS

- A Housing Advance may be used to purchase a stove, a fridge, solar panels or a generator; water tank & water pump for a member's house.
- Housing advance can also cover labour and transportation costs up to the value of K600.00 (in cases where member is building on customary land.)

CALCULATION OF HOUSING ADVANCE ENTITLEMENT

Calculation of housing advance is a maximum of 60 % member's entitlements (this is members contribution, employer contribution and accumulated interest) and payable net of tax.

REPAYMENT OF HOUSING ADVANCE

Section 90 (as amended) requires a housing advance to be repaid (restored to the level prior to withdrawal) by increasing rate of members' contribution by an additional 2 % of gross salary.

Members must show proof of increased rate of contribution (minimum 2%) prior to receipt of housing advance payment.

Only principal amount withdrawn excluding interest is to be repaid.

AUDIT & INSPECTION OF USE OF HOUSING ADVANCE

Where an advance has been sanctioned for constructing a house or carrying out substantial repairs and maintenance an inspection must be carried out on the property before work commences and after work is completed. (The member, as part of the approval process should supply photos).

Where an advance is discovered to have been misused the member will be required to repay the advance at an increased rate of contribution above 2 % and will not be entitled to another advance for the rest of their active working life.

REMARKS

These guidelines ensure there is no unfair advantage to any one ASF due to misinterpretation of the intent of Section 90 (amended) of the Superannuation Act. It is acknowledged that individual funds will be responsible for managing their own housing advance schemes but within the above parameters.

Whilst the guidelines will form the basis of Bank of Papua New Guinea's prudential standards and the Superannuation Act accompanying regulations the Association of Superannuation Funds PNG will review the guidelines from time to time when necessary.

1.2 Unemployment Amendments

Superannuation (General Provisions) Act 2002.

The *Superannuation (General Provisions) Act 2002* be amended as follows:-

Payment of Entitlement (Amendment to Section 90)

Section 90(5) is amended in paragraph (b) by inserting after the word “re-employed” the following:-

“or the balance of the members account falls below K1,000.00 in which case the member may cease monthly withdrawals and withdraw the balance of his account or ”

1.3 Financial Requirements of a Licence Holder

Section 3D of the Regulation is amended in Subsection (1)(a) by:-

- (a) repealing Subparagraph (i) and (ii); and
- (b) Subparagraph (iii) now becomes Subparagraph (i); and
- (c) Subparagraph (iv) now becomes Subparagraph (ii).

1.4 Loans made by an ASF on an arms length basis

Prohibited Provisions (Amendment to Section 72)

Section 72 of the Principal Act is amended in Subsection (1)(c) by repealing the words “or any other person”

1.5 Taxation

Purpose

The purpose of this paper is to seek a review of the taxation treatment applied to interest and earnings on superannuation.

Background

To date the Superannuation Industry has been - fortunate in the reform of taxation on superannuation. The tax system on the recommendation from the taskforce and the ASFPNG have seen taxation on superannuation overhauled. We have been fortunate that Treasury has been - receptive -to our proposals. In the 2003 Budget the following reforms were implemented

Tax is levied on your superannuation at the time that you withdraw. The tax system is designed to favour long-term contributors and substantial tax benefits are incurred for those who remain in the system long term. Different rules therefore apply depending on the years of service for employer and interest components of superannuation.

Years of Membership	<5 years	<5 years and <9 years	<9 years <15 years	<15 years
Rate of Tax	Marginal Rate of Tax	The lesser of 15% or the marginal tax rate	The lesser of 8% or the marginal tax rate	2% tax on interest and employer contribution

A concessional rate of tax of 2% also applies to distributions where the payments relate to benefits accrued before 01 January, 1993.

Similarly, tax on earnings was reduced below the company tax rate of 30% to 25% (the rate prevailing before the increase in the company rate).

The tax application on superannuation in PNG is far less complicated and more user friendly than in Australia, and we need to keep it that way. We are indeed fortunate that Superannuation in PNG does not carry excessive legislative baggage.

Proposed Further Reform of Taxation on Superannuation

Nasfund believes that - there is still one anomaly that requires addressing.

Currently tax is applied on superannuation earnings at 25% on income generated from fixed interest securities of less than 5 years maturity - which is unavoidably the predominant form of investment in present circumstances for most Funds. - Earnings are then taxed again at the member level on member withdrawal. This appears to be unfair.

- a Member currently on the maximum tax threshold could pay through the Fund 25% on the income generated and then if withdrew under five years of membership, pay a further 47%. In effect the taxation would be 72% over all on the income earned.
- A more common example would be a member with between 5 and less than 10 years standing, who has to pay 15% on exit- a total tax rate of 40% on earnings

These are penal rates on mandatory contributions.

Moreover, with the recovery in confidence in superannuation, there is growing interest among some members in voluntary contributions, which would be to the benefit of the country as well as the member, but the double taxation of fund earnings constitutes a barrier to this development.

The situation is actually much worse than it appears when it is remembered that taxation applies to nominal, not real, earnings.

- for example, if the rate of interest on the fixed interest earnings of a Fund is, say, 10%, and the rate of inflation is 7.5%, then the real return is only 2.5%- and after tax at 25%, the real return on members' funds is zero. - The member on exit is still required to pay tax on the after-tax nominal earnings, meaning that he has suffered an outright loss in real terms on his savings.

Nasfund believes that this is iniquitous and that tax on income on withdrawal should be awarded the same status as member contributions, (i.e tax is paid once at the source only)

1.6. (A) Repeal And Replacement Of Section 79;

Section 79 of the Act should be repealed and replaced with the following:

“Section 79 - Power to Recover Contributions with Interest on Default

(1) Where an employer defaults in making any contributions required under this Part, the licensed trustee of the relevant ASF may, by written notice, require the employer to make payment, within a month or such further period as may be allowed, of the outstanding contributions together with penal interest at the prescribed rate set out in the regulations from the date on which payment was due until the date of payment.

(2) If at the expiration of the period referred to in the notice issued under Subsection (1), the employer fails to pay the outstanding contributions together with penal interest, the licensed trustee of the relevant ASF may take all necessary measures, including the commencement of a civil action against that employer, to recover the outstanding contributions together with penal interest as a debt owing to the ASF.

(3) An action commenced under Subsection (2) shall be heard by a Court of competent jurisdiction.

(4) In any action brought under Subsection (2) by an ASF, the Court may award costs against any party or claimant other than the ASF which costs may be recovered as a debt to that ASF.

(5) In any action brought under Subsection (2), the Court may, on application, whether as interlocutory or final relief, order a person to cease any activity until further order.

(6) Any monies to be paid by the employer as a result of an action by the ASF shall be paid to the ASF and, in addition to any other remedy, may be recovered by the ASF as a debt to the ASF.

(7) Any monies recovered by the ASF including any penal interest under an action commenced under Subsection (2) shall be treated as if they were contributions received by the ASF under Part XIV for and on behalf of those members whose contributions were not remitted by the defaulting employer.

(8) An action commenced under this Section shall not waive the right or rights of the Central Bank or any other person to institute any other proceedings against the employer under this Act or any other law.”

2. Matters not passed by the ASFPNG but referred to the Taskforce

2.1 Discussion Paper for ASFPNG – Trustee Discretion for release of benefits on compassionate grounds.

Under the current PNG Superannuation Regulations, there is no provision for Trustees to release funds to current members in circumstances of severe personal events that require a level of financial assistance.

It is fair to say that superannuation comprises the bulk of ordinary workers savings in PNG and as such is usually the first port of call when a member faces personal situations that require financial assistance.

Baring in mind the commitment of the current regulation to preserve superannuation savings for retirement, Trustee’s are often faced with requests from members for financial assistance in extreme situations.

In particular, medical emergencies where life of a member, or members’ child is threatened, along with requests for burial expenses are the most difficult emergency requests for Trustee’s and Administrators to manage. These are requests charged with high emotion and often end in tragic circumstances with a pall hanging over the related institution due to its inability to assist.

Under Australian Legislation, Superannuation Trustees are allowed a discretionary amount in cases of “Release of Benefits on Compassionate Grounds”. The current Australian conditions are as follows (striking out foreclosure on principle place of residence conditions):

A person may apply to the Regulator for a determination that an amount of the person’s preserved benefits, or restricted non-preserved benefits, in a superannuation entity may be released on the ground that it is required:

(a) to pay for medical treatment or medical transport for the person or a dependant; or

~~(b) to enable the person to make a payment on a loan, to prevent:~~

~~(i) foreclosure of a mortgage on the person’s principal place of residence; or~~

~~(ii) exercise by the mortgagee of an express, or statutory, power of sale over the person’s principal place of residence; or~~

(c) to modify the person’s principal place of residence, or vehicle, to accommodate the special needs of the person, or a dependant, arising from severe disability; or

(d) to pay for expenses associated with the person’s palliative care, in the case of impending death; or

(e) to pay for expenses associated with a dependant’s:

- (i) palliative care, in the case of impending death; or
 - (ii) death; or
 - (iii) funeral; or
 - (iv) burial; or
- (f) to meet expenses in other cases where the release is consistent with a ground mentioned in paragraphs (a) to (e), as the Regulator determines.
- (2) The Regulator must determine, in writing, that the person has satisfied, for the purposes of sub regulation 6.18 (1) or 6.19 (1), a condition of release on a compassionate ground if the Regulator is satisfied that:
- (a) the release is required on a ground mentioned in sub regulation (1); and
 - (b) the person does not have the financial capacity to meet an expense arising from that ground.
- (3) The Regulator cannot be satisfied that money is required for medical treatment unless 2 registered medical practitioners (at least one of whom must be a specialist) certify that:
- (a) the medical treatment is necessary to:
 - (i) treat a life threatening illness or injury; or
 - (ii) alleviate acute, or chronic, pain; or
 - (iii) alleviate an acute, or chronic, mental disturbance; and
 - (b) the treatment is not readily available to the person, or the dependant, through the public health system.
- (4) The Regulator cannot be satisfied that money is required for medical transport unless the medical treatment for which the medical transport is required has been certified, under sub regulation (3), as necessary for a reason mentioned in paragraph (3) (a).
- ~~(5) The Regulator cannot be satisfied that money is required on the ground mentioned in paragraph (1) (b) unless the person gives to the Regulator a written statement from the mortgagee that:~~
- ~~———— (a) payment of an amount is overdue; and~~
 - ~~———— (b) if the person fails to pay the amount, the mortgagee will:~~
 - ~~———— (i) foreclose the mortgage on the person's principal place of residence; or~~
 - ~~———— (ii) exercise its express, or statutory, power of sale over the person's principal place of residence.~~
- ~~———— (6) A statement under sub regulation (5) must include the following information:~~
- ~~———— (a) the amount that is equal to 3 months' repayments under the mortgage; and~~
 - ~~———— (b) the amount that is 12 months' interest on the outstanding balance of the loan at the time the statement is made.~~
- (7) In this regulation:

medical transport means transport, for medical attention, by land, water or air.

With consideration to the conditions within the PNG public health system and the costs associated with seeking private or overseas medical attention, not allowing a member or a member's dependent access to superannuation savings under such circumstances appears over restrictive.

I would like to propose the following discussion points:

- Should the Bank of Papua New Guinea allow Trustees of ASF's the ability to make discretionary payments in times of medical emergencies for a member or a member's dependent and or;
- Release is available for associated costs upon death of a member's dependent.
- What would the qualification criteria be?
- Should there be a limit on payments?
- Should the release be only limited to emergencies?

Sponsor: Stephen Brown

2.2 Procedure Where no Nominee

Where at the time of the death of the member, no valid nomination has been made or no nominee is still alive, the amount standing to the credit of the member in the fund shall be paid:-

(1) to his or her dependents dependants, if any, and in so paying the ASF shall approve payments to a spouse or spouses, where there is more than one spouse, who shall, with their juvenile dependants be paid by the ASF in the following proportions in the distribution of benefits:-

(a) the spouse or the spouses to be paid 60% of the benefits; and

(b) 40% of the benefits to be divided equally and paid to the juvenile dependants; and

(2) where the deceased contributor has no dependants – his benefits shall be paid in a lump sum to his next of kin as determined by the ASF.”

Sponsor: Leon Buskens

3. Papers yet to be finalised for ASFPNG Review

3.1 Life and Invalidity Insurance

The *Superannuation (General Provisions) Act of 2000* leaves the provision of life and invalidity insurance entirely on the members to fund at their own expense. This is not in the interest of the members due to the financial burden it places on the members. Life and invalidity insurance is of vital importance to the members and its benefits cannot be underestimated.

Life and invalidity insurance was an integral part of public service superannuation and with enormous benefits it should be given a certain degree of prominence in the industry. The amendments proposed herein give the ASF's an option to take out-group life and invalidity insurance cover for their contributors.

Sponsor: Leon Buskens

4. Other Matters for Consideration

4.1 Legislative Amendment to confirm that the Public Finances Management Act does not relate to the superannuation industry

Sponsor: Rod Mitchell

4.2 Legislative amendment that the Parliamentary Public Accounts Committee has no jurisdiction over the superannuation industry

Sponsor: Rod Mitchell

5. Passing of Amendments

5. Ensure that all amendments to legislation including the regulations have been passed