

ASSOCIATION OF SUPERANNUATION FUNDS OF PNG INC.



PROPOSED CHANGE TO SECTION 96 RE PROTECTION AGAINST ATTACHMENT - DRAFT

DATE: Monday 18th October 2004

Purpose: The purpose of this paper is to modify the full effect of section 96 of the superannuation 2000 Act in regards to protection against attachment of a member's contribution.

Background: The current section 96 of the Act prohibits any form of attachment of a Members contribution in the form of

- Being assigned or charged
- Attachment by order of a court against a liability incurred by a member

Problem in application: In theory, Members contributions should never be used as collateral guarantee in any debt or loan by a member. Similarly, in the case of bankruptcy, superannuation contributions should be protected from creditors. This is a concept with strong recognition overseas.

In practice, there is a particular situation that continues to cause frustration with employers with this section of the Act. Currently, if a member steals from his employer and is consequently sacked because of stealing or misappropriation of property, the employer cannot seek the employee's contributions as part of recompense.

A number of employers have felt aggrieved that former employees have been dismissed because of stealing and they are powerless in recovery. As a result it is proposed that in the advent of an employee being dismissed for stealing from their employer, the employer can make claim for the employer portion of the contribution only.

Such a claim would be on the basis that

- The employer will within three months of the dismissal of the employee lodge a claim with the ASF.
- That the claim will be supported by a court writ and that as a result
- The employer portion will be held back from the employee until such time as a decision has been determined by a court or there has been an agreement made between the employer and former employee in a negotiated settlement.

Summary: Modification of Section 96 to attach the employer portion of a member's salary in the advent that an employee has been terminated for stealing provides some avenue of compensation for an aggrieved employer. Such modification also will encourage employees not to steal from their employer as their employer portion could be subject to ultimate forfeiture.

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