



COMMONWEALTH OF AUSTRALIA

SENATE

SELECT COMMITTEE ON SUPERANNUATION

Reference: Restrictions on early access to superannuation moneys

SYDNEY

Thursday, 14 August 1997

OFFICIAL HANSARD REPORT

CANBERRA

SENATE
SELECT COMMITTEE ON SUPERANNUATION

Members

Senator Watson (Chair)

Senator Allison
Senator Conroy
Senator Chris Evans

Senator Ferguson
Senator McGauran
Senator Sherry

Matters referred for inquiry into and report on:

- (1) That the Senate notes that the Government has introduced the Small Superannuation Accounts Amendment Bill 1997 which contains three principles for tightening the provisions governing the early release of superannuation benefits as outlined by the Government in the 1997 budget documents:
 - (a) to remove access to superannuation monies where the balance is less than \$500;
 - (b) to restrict access to superannuation monies for persons under preservation age who are permanently leaving Australia; and
 - (c) to restrict access to superannuation monies on the grounds of severe financial hardship by instituting a new severe financial hardship test which requires persons to have been in receipt of specified Commonwealth income support payments for a continuous period of 52 weeks if under age 55, or for a cumulative period of 39 weeks if over age 55.
- (2) That, given that these principles are to be applied to the entire superannuation system, the issues in paragraph (1) be referred to the Select Committee on Superannuation for a comprehensive analysis and full public hearings on their implication, particularly their impact on low and middle income earners.
- (3) That the committee report by 28 August 1997.

WITNESSES

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SENATE SELECT COMMITTEE ON SUPERANNUATION

Restrictions on early access to superannuation moneys

SYDNEY

Thursday, 14 August 1997

Present

Senator Watson (Chair)

Senator Allison

Senator McGauran

Senator Conroy

Senator Sherry

The committee met at 9.00 a.m.

Senator Watson took the chair.

CHAIR—This is the second public hearing on the committee's inquiry into the restrictions on the early release of superannuation monies. On the recommendation of the Standing Committee on Selection of Bills, the Senate, on 19 June 1997, referred the Small Superannuation Accounts Amendment Bill 1997 to the committee for inquiry and report by 28 August 1997.

The provisions of this bill will tighten arrangements relating to the early release of monies held in the superannuation holding accounts reserve known as SHAR. The principles dealt with in this bill are to be applied to the entire superannuation system. Accordingly, on 26 June 1997, the Senate extended the reference to a comprehensive analysis and a full hearing on the implication of the bill's provisions, particularly the impact on low and middle income earners.

Before we commence the taking of evidence, let me place on record that all witnesses, and the submissions made to the committee and the evidence given before the committee today, or any hearing of this committee, are protected by parliamentary privilege. For those who have not appeared before a committee parliamentary privilege means special rights and immunities attached to parliament or its members and others necessary for the discharge of the functions of the parliament without obstruction or without fear of prosecution. You are protected in that any infringement to your liberties in terms of what you say will be regarded as a breach of that privilege. You are protected according to the processes of parliament.

GILLESPIE, Mr John Milton, Principal, Gilton Business Consultants, Level 4, 350 Kent Street, Sydney, New South Wales 2000

LAMROCK, Mr Peter Stuart, Company Secretary, John Swire and Sons Pty Ltd, 8 Spring Street, Sydney, New South Wales 2000

CHAIR—Welcome. The committee prefers all evidence to be given in public but if at any stage you prefer any aspect of your evidence to be given in private, you can apply to the committee and we will give consideration to your request. Thank you both for your submissions. Mr Lamrock, your submission was very much to the point and very pertinent. Obviously, as a major trader and shipping operator in this country for a long number of years you do have a lot of international people who come to this country who are obviously affected by the changes in the legislation. I now invite you to make an opening statement.

Mr Lamrock—Thank you. Can I just add that I am also a director of the trustee company of the Swire group retirement plan, which caters for superannuation arrangements in Australia. As you referred, the Swire family set up in Australia in 1855 so they have been here for a while. They re-established as John Swire and Sons proper in 1952. We currently have a turnover of approximately \$200 million, and net assets of between \$300 and \$400 million, just in Australia. The group operates in cold storage, agriculture, road transport and shipping. It also has substantial investments in PNG. One of our best known associated companies is Cathay Pacific, and we get involved in Cathay Pacific matters.

With regard to the Swire group retirement plan, this is a defined benefit fund which handles the superannuation arrangements of approximately 200 of the 800 Australian staff. It also handles about 130 of the Cathay Pacific staff in Australia. Its current membership is about 330 and it has assets of \$30 million. It is a defined benefit fund. It is Swire's philosophy to continue it as a defined benefit fund in the belief that it is the responsibility of the company to take the investment risk in order to provide a suitable retirement benefit for its staff.

Worldwide, the Swire group has approximately 45,000 staff so we have a fairly detailed recruitment and training system for our top managers. We train them from day one, basically. They are recruited in the UK and then we circulate them through the group's interest around the world.

Our submission, in summary, is that the superannuation arrangements for the people we take on as temporary residents, both in a trainee category and the middle-manager category, are covered from an early stage. The arrangements are put in place in Hong Kong. We do not get involved in the day-to-day arrangements but we believe that they are suitably covered by a superannuation for the group as a whole. Therefore, the

additional need to cover them under the SGC regime in Australia does not seem to make, in our context, a lot of sense, especially if they cannot take that money when they leave. There is a good chance that that money will have to sit here until they are 55. They may not come back at all so having to leave that money in Australia until they are 55 does not make a lot of sense in the Swire context.

CHAIR—What sort of passport, visa, would they come to Australia on?

Mr Lamrock—Mr Gillespie is the expert here but I believe the occupational trainee is one category and the old 413 category covers the more senior people. Mr Gillespie helps us on immigration matters.

CHAIR—Mr Gillespie, you might like to start from the beginning and work up to the situation that we are at.

Mr Gillespie—Thank you. I am a registered migration agent. I am the principal of a firm called Gilton Business Consultants and the Swire group is one of my current clients. I have been operating as a migration agent since 1982. I am involved in all sorts of immigration, including the temporary area we are talking about today. I am a member of the Migration Institute of Australia and in fact I was the first national president of that organisation. I am also a member of the Australian Institute of Administrative Law.

I suppose my view is that I have a desire that all immigration and associated matters be logical, transparent and open to scrutiny. There are two matters which I have some difficulty with. Firstly, the compulsory payment of superannuation by employers for temporary visa holders and, secondly, where temporary residents are obliged by law to pay the Medicare levy but receive no Medicare entitlement. Unfortunately, the second point I cannot address at this meeting but I would like it recorded. My views are expressed in my simple paper and obviously I care about my clients and the potential nonsense that they are exposed to.

The visa class which Mr Lamrock has spoken about is the occupational trainee where people normally stay for one year in Australia. They are rotated through what I would term as work experience occupations, where they are guided through. These people come straight from university, I might say, and some of them spend time on the cotton fields of Bourke, some of them go to transport companies and some of them are involved in shipping.

Normally, they rotate every six months, and then they are moved on, because this is an executive training scheme. They could end up anywhere in the world: Japan, USA, UK, Hong Kong—literally any country in the world where Cathay Pacific operates. It seems to me an absurdity where these people are being paid or there are funds lodged here and cannot be removed, because they may never come back to Australia—in fact, the funds may almost be lost because they are relatively minute funds and they have no effect

on the overall principles behind superannuation.

The executive people who come here by rotation—and these may be previous trainees who go up through the system and may come back here as managers—are currently under what we call a 457 visa. The 457 replaced the 413 and the 414, and I hate to confuse people with this, but it again seems absurd that the government can restrict 457 visa holders, who meet the criteria for the old 413, which does not now exist. This is absurd! We are talking about the troubles in our tax act and things like that and now we are compounding this problem! It is patently clear that we should be working to allow anybody on a 457 visa to remove any funds from Australia when they depart Australia.

The other point I would like to make is that at one stage the assertion was made that the temporary visa system was a method of bringing cheap labour to Australia. I spoke last week to a fairly experienced relocation consultant in Sydney and I said to her, ‘How much does it cost to move a person from overseas—and I am talking about an executive—on a temporary basis?’ This is not the cost of the government charges; this is the fiscal cost of moving that person with their family and setting them up here in a house. She surprised me by saying that it is in excess of \$120,000. It would be a very brave company, and a very rich and foolish company, which would use this as a medium of bringing in what cannot be ‘cheap’ labour from overseas, because they have got to pay that person something when they are here. So, I reject the assertion that it could be open to that.

The criteria on the immigration side—and I think you are hearing words from the Department of Immigration later—are in essence that, unless you cannot find a suitable Australian in Australia to fill the position, you cannot bring a person in. There has been a loosening in this in recent times with the introduction of the 457 visa, which says that, if a position is a key position and the department accepts it is a key position—and you have presented evidence to the department that it is a key position—you do not have to do what we call ‘labour market testing’. The labour market testing in its own right is an ass, of course, because it lays down a procedure which says you have to have four advertisements in the paper on different days and in different sizes and that you have to lodge the vacancy with the CES.

I recognise the reality of the world today, but it is also important to recognise that, if an employer wants a particular person to enter Australia as an employee—he has some skills he wants brought in—he will manipulate that labour market test. That is all I wish to say about that. But it does prevent a lot of low skill level people coming into Australia.

CHAIR—Do you think that these new provisions could discourage firms such as Swire from bringing some of their trainees or their specialists here for short rotation training?

Mr Lamrock—No. There are only six or seven people at any one time, so it

would not change our attitude.

CHAIR—Is your view, firstly, that there should not be superannuation guarantee payments; or, secondly, that there should be superannuation guarantee payments but that the employee has the right, when they leave Australia, to access them either as cash or as a roll-over into an equivalent superannuation fund?

Mr Lamrock—Firstly, there should not be a SGC requirement for this category of people. If there is a SGC requirement, they at least should be able to take it when they leave Australia.

CHAIR—In what form?

Mr Lamrock—On the basis that they have already got a superannuation plan in place for them overseas and the amounts are not great after only a year or 18 months here, cash would be the way to go.

CHAIR—Mr Gillespie, would you like to offer something in answer to that?

Mr Gillespie—I am not a superannuation expert.

CHAIR—From your experience, though, in terms of this being an impediment?

Mr Gillespie—It is not an impediment as far as the executive is concerned. But, in relation to the lower skill levels—and I am talking of the now defunct 414 category, which is a specialist—yes, it is an impediment. You have got to remember that the executive in the main has a structure set up and, if he works for a very honourable firm like Swire, he is well looked after. It is a very paternal company. But not all companies have the same ethics as Swire has in dealing with its employees, and it is quite likely that an employee could be disadvantaged deliberately, I would think, because there may be no fund to roll it over into. In one of the press statements, it is inferred that other countries should set up like funds so that funds can be rolled over. I think it is a bit bold of Australia to say that all countries in the world should follow our lead, whether correct or not.

Senator SHERRY—The Treasurer would believe they should.

Mr Gillespie—Yes; but I have great difficulty accepting that, because not all countries have these sorts of controls and systems. I think it is a bold assertion to make.

CHAIR—The statement has been made that the Department of Social Security will negotiate with foreign governments in terms of reciprocal arrangements. Would you like to add some comments as to the practicality of reaching a consensus or agreement with a lot of countries as diverse as Hong Kong and Central Europe?

Mr Lamrock—A big task, obviously.

Senator SHERRY—This committee will be going for a long time in the waiting, I suspect—100 years. Mr Lamrock, I note that your head office is in London. Do you have trainee executives and other executives in other countries in the world besides the UK and Australia?

Mr Lamrock—Yes. They are recruited mostly in the UK, from Oxford and Cambridge and other institutions. Then they are assigned to different Swire companies around the world. The majority go to Hong Kong, simply because that is where the majority of Swire activities are. We have Swire Pacific and Cathay Pacific—a lot of activity in Hong Kong. On average, most of them would go to Hong Kong, but they can go anywhere.

Senator SHERRY—Do you have any knowledge about how pension superannuation retirement contributions are treated in those countries?

Mr Lamrock—I personally do not know.

Senator SHERRY—If you are able to obtain that information, it would be useful. I do not want you to go to enormous trouble, but it would be useful to know. My reason for asking is that I am wondering whether similar problems are encountered in the other countries in which you are based, and also how they are dealt with.

Mr Lamrock—Yes. I will do a bit of research on that matter.

Senator SHERRY—On the final paragraph of your submission, you refer to the administrative nightmare that would ensue. Can you provide us with a little more detail about how you believe the administrative costs or burdens would increase?

Mr Lamrock—The administrative effort in order to track a small amount of money over a period of up to 30 or 40 years until the age of 55 would be out of all proportion to the amount of money actually held.

Senator SHERRY—Theoretically, if you had an executive who was in five or 10 different countries during their working life and this approach was taken they could end up with amounts of money in every country in which they worked.

Mr Lamrock—Yes, I agree.

Senator SHERRY—You mentioned that you have 200 of your 800 employees in a defined benefit fund. What happens to the other 600 in this country? Do you have another fund for those?

Mr Lamrock—No. They are all looked after in industry award funds.

Senator SHERRY—Appropriate industry funds, okay. I assume that the effective SG contribution level for the executives who are in the defined benefit fund, where it applies in this country, is accepted as part of the benefit that is paid to them through the defined benefit fund on retirement for those 200 people.

Mr Lamrock—There would not be many temporary residents included in the 200 because, currently, we are not obliged to pay super for 413 visa holders. So there are just no contributions for them at all.

Senator SHERRY—You mentioned the work they do—your temporary executives are out in cotton fields and other places. When they are doing work like that, are they still paid and treated as executives? If they are picking cotton, they are presumably not in the industry fund or whatever the fund is that covers the cotton pickers.

Mr Lamrock—No. We put the trainees in a fund called ASSET, which looks after a lot of our other award staff.

Mr Gillespie—I think we should correct that—the executives are not picking cotton.

Senator SHERRY—The trainees. I was just interested in the fact that the trainees—

Mr Lamrock—The trainees would come very close to picking cotton for us for a short time. It depends on work experience.

Senator ALLISON—My questions have more or less been answered, but I have just one point of clarification. Are there none of your employees who ever finally settle and retire in Australia?

Mr Lamrock—Yes. Some of the recruits that are earmarked right from the start to hopefully be senior management within the Swire group eventually come and settle in Australia—some under totally Australian conditions. In other words, they then opt out of any super fund in Hong Kong and come totally into the Swire fund in Australia under all Australian conditions.

Our current managing director is in that category. But the majority of the other senior positions in Australia are filled by Australian management. It is just this very top echelon that is filled by these rotating senior Swire staff.

Senator ALLISON—Of your trainees and of your executives—perhaps in two different categories—what percentage would end up retiring in this country?

Mr Lamrock—A very small percentage—one or two per cent.

Mr Gillespie—Some of these people may not be able to retire in Australia with the very strict immigration laws at the moment. Things that were more accessible in the past may not be as accessible now.

CHAIR—Would either of you like to make any concluding remarks?

Mr Gillespie—I would like to say—and it is repeating what I said before—that I think it is absurd when we have a system that uses a criteria which no longer exists to make a judgment. It may be fine for Mr Lamrock to make those judgments because he knows the background. But think of the many 457 visa holders who are then asked if they meet—or the employer asks—the 413 criteria. To me it is patently absurd to continue using rules which no longer exist to administer a system.

CHAIR—That will become an even greater problem as time goes by and new people come in to, say, replace Mr Lamrock or even yourself and who are not aware of the history of the 413 or the conditions under which a 413 type visa would be made.

Mr Gillespie—This particularly applies in the system of amending documents today, which is a throw away system. I would not be surprised if in about five years time you ask somebody what a 413 visa is they will say, ‘What?’ because nobody will know—the department will not know.

Senator SHERRY—Just one other point. Mr Lamrock, I asked you about other countries and what their retirement payment arrangements are. Do you know what the arrangements are in the UK for your executives?

Mr Lamrock—In detail, no, I do not.

Mr Gillespie—I could probably add something—not talking about the Swire group. Most senior executives today work on a contract system and they are very detailed legal documents which cover, amongst other things, superannuation and benefits. I have seen a document from a very large international company based in the UK where I think the employment agreement was about 10 pages and a substantial part of that was about remuneration and benefits. They are very complex these days.

CHAIR—Thank you for coming and appearing before the committee.

CASEY, Mr Kevin Lawrence, Member, Tax Policy Committee, Association of Superannuation Funds of Australia, Level 19, 133 Castlereagh Street, Sydney, New South Wales 2000

MILLS, Ms Brenda Lorna, Manager, Regulatory Information, Association of Superannuation Funds of Australia, Level 19, 133 Castlereagh Street, Sydney, New South Wales 2000

CHAIR—Welcome. You are both people well known to our committee and we always welcome input from ASFA. We thank ASFA for the submission to the inquiry, and we invite you to make an opening statement. Ms Mills, I understand you will be leading the discussion, very much with assistance from Mr Casey.

Ms Mills—I just wanted to give a summary of the paper that we sent to you. Basically, while the Small Superannuation Accounts Amendment Bill 1997 directly affects the small superannuation account holders of SHAR, the early release principles have already been introduced in amendments to the SIS regulations which apply to all complying superannuation funds, and this means that there are wider implications for the whole superannuation industry in relation to restricting people's access to their superannuation benefits.

These changes relate to abolition of the \$500 threshold, replacing the severe hardship test with an objective test, and releasing moneys to a non-resident after preservation age. ASFA's basic position is one of support for the tightening of early release rules because it reduces leakage from the superannuation system. This is a step towards maintaining the integrity of superannuation arrangements. It is thus an increase in retirement income for individuals and it provides improved national saving. From a national policy perspective, it is important that superannuation's uses be restricted to retirement income purposes and current prescribed ancillary purposes such as death and disability, and that it not be used to support commercial ventures or to provide self-funded unemployment support.

In our paper we quoted the RIM task force paper which was dated June 1997. That showed that the tightening of the early release benefit provisions would amount to an increase in national savings of \$115 million in 1997-98. That was a fairly interesting paper.

With the abolition of the \$500 threshold it is desirable that low- and middle-income workers be encouraged to save for their own retirement. By accessing their super, members dissipate their own retirement income. With the introduction of member protection, the importance of cashing benefits under \$500 to avoid onerous fees and charges no longer exists.

We then go into the topic of objective criteria. While ASFA welcomes objective criteria which would reduce the amount of inequities created by the exercise of individual

discretion, ASFA believes that there is a need to finetune objective provisions to ensure that no inequities are created. An example of that would be the compassionate grounds. That is not actually in this legislation, but it is relevant in the SIS regulations.

On the topic of permanent departure from Australia, we are in favour of this rule for Australian residents. However, applying this rule to non-residents can lead to unwieldy results for travellers on a working holiday or for executives. There is a strong case for continuing to allow travellers to have access to any benefits arising from temporary employment in Australia. ASFA notes that Treasury announced that the government will introduce legislation with effect from 1 August 1996 to continue the SG exemption for employers of executives who meet the criteria for the former class 413 visa. However, this development has certain problems which we have identified.

The first one is that the superannuation guarantee contributions have already been paid for the interim period when the exemption was not in force, and these now have to be preserved until retirement. The second issue was that we have been informally advised by the ATO that employers will be expected to judge whether the employees now fit the former class 413 criteria according to guidelines which will be issued to them. There is a big problem with that particular issue. We believe that employers would be performing quasi-immigration duties by determining visa criteria, which would lead to those criteria being applied unevenly according to employers' willingness or expertise at administering them. They were the major points raised in our paper.

CHAIR—I want to cover some ground that other witnesses possibly have not covered. My first question concerns the objective test. Do you really think it is going to stop the leakage as far as expatriates are concerned? I think you might have to distinguish between Australians going abroad and expatriates leaving employment and going abroad. Would that be correct? People say there will not be any leakage and there has not been leakage. Why put all these millstones around employers' necks if there is no leakage?

Mr Casey—It depends on what you term 'leakage'. Clearly, there are those who are here on a temporary stay in terms of working—particularly, say, at the executive level—where there has been money set aside into superannuation, whether that has just been the superannuation guarantee or whether it has been amounts above that. If that person is only here temporarily, is that money really set aside for retirement in the Australian environment? You would have to say no; therefore I would not count allowing its release out of the system when that person emigrates back to their home country as leakage out of the Australian system.

CHAIR—Where is the evidence of the leakage? Have you got evidence?

Ms Mills—We have the RIM task force paper, which talks about the tightening of the leakage.

CHAIR—But is that just a theoretical dissertation? Is it based on evaluation or analysis of what has actually happened in the marketplace, particularly as far as the expatriates are concerned?

Mr Casey—I do not know the basis of the RIM analysis, but you could say that there has probably been, anecdotally at least, leakage in terms of people who are Australian residents, et cetera. But in terms of expatriates, I think the expectation has always been that, if they are provided with superannuation in Australia, which may in many cases be an offset against what they would have been paid externally in their home country—

CHAIR—We were essentially looking at the 457 type visas and the application of a 413 and the problems over time of having to know the understanding of a 413 in terms of the conditions. I say to you, as leaders in this field, where is the evidence? Have you got evidence of leakage by the expats?

Mr Casey—Not directly. The only area that I could see where you could say there would be leakage in respect of these people would be if superannuation provided tax support via deductibility of contributions, the concessional treatment of investment et cetera, and then ultimately the concessional treatment of that benefit when it is paid. If that money is not utilised within the Australian system for retirement incomes then you could say that there has been tax support for money which is then being paid overseas. There may be some leakage for that. I could not quantify what that would be, but that may be what they are talking about.

CHAIR—Are you in favour of accessing to cash or accessing in terms of being able to use that money and putting it into an overseas rollover fund or its equivalent superannuation fund? You said you felt it was reasonable that they got access. I am asking you to qualify it in terms of whether there should be conditions on it, whether they can get cash in hand or whether it should go into a rollover fund. Or should it be our responsibility in Australia of determining what people should do overseas with it?

Mr Casey—I would not see us as having a role in terms of determining what they would do. If you require it to be rolled into a superannuation arrangement overseas, it will very much depend upon what the rules and regulations are in that overseas country. To try and negotiate agreements with a whole range of nations is going to be extremely difficult, and I just do not think, for the amount of money that we are talking about in all of this, that it will be worthwhile.

CHAIR—You cannot see any practical outcome in terms of the government's suggestion that they are going to ask the Department of Social Security to make agreements with other countries around the world?

Mr Casey—No. Let us say we are from time to time faced with the situation of

bringing money into the country from overseas jurisdictions, and particularly, say, from the UK. It is very restrictive and makes life extremely difficult. We do not have an agreement as such, but the rules around the world for superannuation arrangements are so diverse that it would be very difficult, I think, to get a consistent set of rules to apply. And, indeed, it might be that somebody is transferring to, not their home country, to another place of employment with that employer, and the rules there might be quite different from what are going to be ultimately in their home country.

CHAIR—This so-called objective test for the \$500 threshold: we heard some very compelling evidence yesterday from financial counsellors who indicated that being able to access under hardship provisions has enabled people to remake their lives. He gave case after case, which was very moving. How objective is this so-called objective test when basically if you are on certain types of government support you can take out a certain quantum each 12 months without query, without having to establish anything? Simply because you are on a certain type of government support you get automatic access, so it appears, and you call that an objective test. Is it a misnomer?

Mr Casey—I think there is an element of that, that the objectivity of the test is really setting down a standard which says you have to satisfy certain criteria in terms of social security benefits in order to access your superannuation, which at least gives you some sort of delimiters around the circumstances in which people will be able to access their benefits. I have been involved for quite a number of years, through my employer, in looking at hardship cases. It is an extremely difficult area where you have a subjective test on the situation.

At times it is very difficult to divorce yourself from the personal circumstances of the individuals and certainly I would not dispute that there have been many cases where the access to the superannuation benefit has enabled people to actually survive and rebuild their lives. Ultimately, that may, in actual fact, have a beneficial effect from the government's point of view in terms of social security support. Just having a purely objective test will at times make life very difficult. It is an area where you are dealing with people whose financial circumstances are disadvantaged. Superannuation trustees on the whole are not skilled at handling those sorts of people. It is government departments, et cetera, that have the appropriate people to counsel these people. That is not the primary purpose of the superannuation trustees.

CHAIR—If we are talking about leakage and people who can virtually automatically access their superannuation if they have been under certain types of government support, it is true that there will be low income earners who will not have much surplus cash, and they obviously might need that. I would think that there would be tremendous leakage because virtually everybody, once the message gets out, will want to access his or her superannuation.

Mr Casey—Certainly, if you have got people who are on social security benefits

who then have greater financial needs, or they perceive that they have greater financial needs, they have got open-ended access, effectively, to their superannuation, yes, they will dip into that. This ultimately will create problems further down the track in terms of their ability to survive in retirement. It is one of the points that we and others have made that the superannuation system really ought not be used as a de facto Social Security system. If it is there for retirement incomes, use it for retirement incomes, as much as possible.

Senator SHERRY—I will just follow on from what Senator Watson has raised. One of the things that concerns me is that we will have an objective test, both time and social security benefit based and it seems to me that people who meet that test will automatically get their money.

Mr Casey—If they apply, yes.

Senator SHERRY—They will get their money if they apply. There is no argument about that.

Mr Casey—Yes.

Senator SHERRY—There is advantage in simplicity, but it seems to me that we should not assume that there would be the sorts of significant savings in terms of retention of money in the system that are projected in the government's task force estimates.

Mr Casey—If you have got an objective test, then at least you have some way of assessing what the leakage is. It is a subjective test. It is very difficult to have a look and try and ascertain what leakage you are actually getting out of the system because of genuine situations, and what the leakage is in terms of its just being applied purely as a subjective test.

Senator SHERRY—Do you accept that if you have both a time and social security based test, anyone who applies in those circumstances and meets that test—

Mr Casey—Will have automatic access to it.

Senator SHERRY—Whereas at the moment there is a discretionary access based on individual circumstance.

Mr Casey—Yes. Maybe you could have the objective test as the first criterion, and then you may have some sort of overlay on that in terms of—

Senator SHERRY—It is very difficult. I accept the problem that you have raised about making personal judgments. Inevitably you have to do that. What about people who have lost money as a result of gambling? They meet the new hardship criteria and would get automatic access.

Mr Casey—That is right.

Senator SHERRY—Should that be allowed in those circumstances?

Mr Casey—Vis-a-vis a person who may be going through substantial medical costs as a result of an accident or significant illness. I would think that any sort of individual judgment would place a much greater weight on that application for access, rather than one from someone who had lost money through something that would be regarded as less socially needy. The primary responsibility of a trustee is to look after the interests of the members. If we were just applying a purely objective test and we had the situation of somebody who had a gambling problem, you could say that you satisfied the test of the law in terms of the objective test. But, in ultimately looking after the member's best interest in terms of releasing that benefit to the member, then potentially you are disadvantaging quite substantially that person's dependants. So some sort of overlay of some genuine hardship test, over and above the objective test, would assist in that area.

CHAIR—Without first meeting the social security test? There is a big group there that have a great needs basis, that at the time will not have yet necessarily qualified under social security rules?

Mr Casey—It is a balancing situation, Senator, in terms of looking at the potential for leakage where you have got some sort of subjectivity there against the harshness of what is a test which may preclude people from that for a period of time. Maybe some sort of softening of that social security test might assist in that area.

CHAIR—But, if you are only going to have a contribution of nine per cent, would it have any significant impact on these sorts of low income people who fall into this category? Your argument is very valid at 15 per cent or 20 per cent, but is your argument as valid if it is only going to be nine per cent?

Mr Casey—It is not. The fact that a contribution is nine per cent will mean that there is less money accumulated there and a greater percentage of people will automatically fall into the social security system in retirement, so these people in many cases would fall into that social security. They are already falling into the social security in terms of their financial circumstances.

CHAIR—So, therefore, if you are going to go along with nine per cent contribution, is the government correct in imposing all these conditions because of the so-called problems of leakage? At the end of the day, leakage will not really be material if there is not enough capital there.

Mr Casey—I would not think that leakage is the primary reason for which you would seek to try to strengthen the testing in terms of hardship benefits.

CHAIR—But you can see that there would be different approach taken to leakage if you were going to have it at a higher rate than if you were going to have it at a lower rate.

Mr Casey—Yes.

CHAIR—Because of the ultimate consequences of where those people were going to be at the end of the day.

Mr Casey—I think, also, on the leakage side, that by trying to apply the social security test, the aim is to cut out those who have got more significant assets which they may seek not to realise in respect of a financial circumstance, instead, seeking to gain access to the superannuation. There have certainly been cases like that in the past where people have been somewhat asset rich but have sought release of superannuation benefits and have got them.

Senator CONROY—But the problem seems to stem from a few years ago. The system was that the trustees made the decision, it was essentially just rubber stamped by ISC and there seemed to be a degree of rigour in how the trustees applied the test. When the ISC took over primary decision making, and the trustees were just told to tick the box and pass it on to the ISC, it became open slather. I do not think that I have met anybody who did not get a hardship application up in the time that I was working as a superannuation officer for the TWU. The ISC seem to have created the leakage by a fairly open slather approach to hardship.

Mr Casey—The fact was that it was concentrated in the ISC and they had to handle it. We also came through that period of time when we had harsh economic times, et cetera, and there were a lot of people in financial straits and so the numbers were very high. When it was delegated out to the trustees, then there was a spread in terms of that. When it was concentrated in the ISC, just the sheer numbers, I think, forced a relatively rubber stamped type approach. From my experience, the funds that I am a trustee of applied a harsher test than the ISC was applying in terms of financial hardship.

CHAIR—What is your recommendation?

Mr Casey—To at least have some sort of guideline perhaps in the form of social security testing, but with some overlay of objective testing by the trustee.

CHAIR—Are you in favour of the introduction of subjective testing for hardship?

Mr Casey—I think we need some form of guideline. If you leave it completely open, it is totally subjective. I think it makes life very difficult. But you could have some formal social security guideline so that they must have satisfied certain tests that the Department of Social Security uses in determining eligibility for social security benefits.

CHAIR—Do you think ASFA might be able to help the committee in formulating such a guideline? It is not going to be easy.

Mr Casey—It will not be easy. Yes, we would be happy to participate in that.

CHAIR—That would be very helpful. But we have a reporting deadline at the end of this month.

Senator ALLISON—I would like to ask about that test. Yesterday, we heard from someone who was on Austudy who argued quite convincingly that there was no difference in terms of the income support in real terms. He had retired from the bank at a very early age and was doing an accountancy course in order to improve his chances of employment further down the track. Do you have a view about whether treating Austudy as income support is appropriate?

CHAIR—In other words, should that be brought into the objective test?

Mr Casey—I think we have to look at what are the aims of the superannuation retirement income system. If we are trying to establish a system which, over a period of time, will provide people with at least a reasonable base level of retirement incomes, then I think we have to be fairly careful in terms of allowing people fairly open access to that along the way.

If you are looking at sustaining people's lifestyles of their choosing for a period of time—sometimes it is not necessarily of their choosing—if that person satisfied the conditions of financial hardship whilst being on an Austudy allowance, then I believe that should be included in it. I would think it would not just be purely the unemployment disability type things. If people are in genuine financial hardship, that should be included in some form of testing.

Senator SHERRY—On that principle, as superannuation assumes a greater level of the income support for people who are retired—and that will happen, regardless of whether it is nine per cent or 15 per cent, because it is six per cent at the moment—we don't accept the principle in our society that governments pay a person part of their pension prior to retirement in cases of hardship.

Mr Casey—No.

Senator SHERRY—Do you subscribe to the view that that is the sort of principle we should adopt?

Mr Casey—Yes.

Senator SHERRY—Concerning the \$500 threshold, personally I take a pretty hard line on access to superannuation before the preservation age. But surely when a person who has \$500 or less for years in an account, the leakage from the system must be infinitesimal at such low levels of money. Surely we have to weigh up the administrative costs for those people remaining in a system with such low balances over such a long period of time.

Mr Casey—Now that everybody is superannuated, there ought not to be situations that are isolated. People should be able to combine those into accounts. The so-called transfer protocol, et cetera, ultimately down the line should facilitate those sorts of things. I take your point, though, that it is useless having very small amounts hanging around in accounts for many, many years because it is an overall cost to the operation of the system.

From a personal point, two of my daughters, whilst they are studying and working casual, get money put into a whole series of funds and they have very small amounts. I have said to them, ‘Yes, put those amounts together because ultimately they will form a reasonable level.’ But if you have people who have been out of the system for a lengthy period of time and they only have a small balance in there, I think there should be some discretion to actually allow the release of that benefit.

CHAIR—That is not always as easy as we make out because, if you are moving monies from an industry fund to another, there is minimal cost. We heard evidence yesterday about the high exit costs and the high cost of administration of about \$500 in relation to an \$800 income. So while there is this protocol there, there is still a very significant cost—depending where the money is—of moving money to consolidate it into a particular fund.

Mr Casey—We talk relatively glibly about this transfer protocol.

CHAIR—That is right.

Mr Casey—It is a long way from getting to the stage of actually being workable. Yes, into the early stages of the next decade, one would like to think we have got some form of electronic commerce which will enable various providers and funds to talk to one another effectively. But we do not have it at the moment, and it is very difficult to trace money around. Once we have got the tax file number there and we are able to identify people, it will hopefully be a lot easier to actually identify accounts in the electronic commerce which will sit over the top of funds. But that is a few years down the track.

Senator SHERRY—But let us assume that an individual has only one account. I accept the argument that people should consolidate, although I do not see much evidence that it is happening but we could give it time and see how the transfer protocol operates. But for a person who has only one account over a long period of time, it seems to me to be fairly absurd to insist that they keep less than \$500.

Mr Casey—The chances are that that person is going to finish up a lost member and the money is going to finish back in consolidated revenue eventually. This cuts across to the situation of people moving overseas as well. If you have a 35 year old who has been temporarily in Australia for a couple of years and you have to hold onto that benefit for 20 years or more, the chances of losing contact with that person are quite substantial and that money will eventually be lost to the system.

CHAIR—We effectively have Australian residents subsidising those monies.

Mr Casey—Yes. I think there are circumstances where there ought to be discretions for monies to be able to be released.

Senator CONROY—How do you cope with someone who may have three or four accounts, as in the case of your daughters? Instead of consolidating them, they may have three or four accounts with under \$500 but, if they were consolidated, it would be the beginning of a significant amount and they could have the situation where they could individually draw \$400 out of the three or four accounts. How do we factor that in?

Mr Casey—That is able to be done now, in that people could orchestrate that now. I guess there are vehicles called the eligible rollover funds, where you could perhaps make it compulsory for amounts under \$500 to be lodged into an ERF. There are only a relatively small number of those, so you could actually have a mechanism where, if less than \$500 had been sitting in an ERF for a period of time, it could be releasable.

Senator SHERRY—Finally, I have one question on access for people who move overseas. Do you have any comparative data based on what other countries allow or do not allow in this area?

Ms Mills—We could probably rustle something up. I do not think we have got anything at the moment.

Mr Casey—In my organisation, we certainly have a fair bit of interaction with the UK, et cetera, so we can get that information through to ASFA.

CHAIR—We have been fairly hard on you, but we know that you are a robust organisation with a lot of knowledge. We do not always ask all our witnesses such difficult questions.

Mr Casey—I will forgive the senators for that.

CHAIR—Nevertheless, they are very significant issues for a lot of people. This hardship one—it is really hard to ignore the plight that some people get themselves into as a result of sickness, accident, change in family circumstances and a whole host of reasons.

Thank you for your time.

Short adjournment

[10.51 a.m.]

FEYZENY, Mr Emery Anthony, Superannuation Partner, KPMG, 45 Clarence Street, Sydney, New South Wales 2000

FITT, Ms Louise, Director, International Executive Tax, KPMG, 45 Clarence Street, Sydney, New South Wales 2000

CHAIR—Firstly, I wish to thank KPMG for their submission to the inquiry. We always welcome input from major accounting firms. We invite you to speak to your submission. Following that, the committee members will ask you questions. During your oral presentation, we ask you to highlight major areas of difficulty and your solutions, or recommendations for solutions, to overcome or ameliorate those problems.

Mr Feyzeny—We have tried to meld a couple of skills which are relevant in this situation. At the outset, I should state that our submission is limited merely to the expatriate foreign employee situation, the non-resident one. We do not have any strong views on the threshold or the \$500 issue or the hardship one. I think other parties can address it as they see fit. We are fairly neutral on those two issues. In a positive sense, we would probably endorse the policy that has been put forward by the government, notwithstanding some of the ASFA comments earlier on.

Our submission effectively reflects our concern that the whole concept of imposing a superannuation contribution, in the first instance, on expatriates who are visiting our country seems to be flawed in as much as they are not social security dependant as a rule. Therefore, we have to question why the government has done that. We take it as given that there is a levy there under the Superannuation Guaranteed Administration Act. Therefore, the issue today is really: can that be released? Nevertheless, there is a case for saying that the system itself perhaps requires review from the outset. If we do not get money into the system for these people, we do not really have to worry about giving release to those moneys on permanent departure.

The three fundamental issues are the appropriateness of having those contributions going, the cost to employment and possibly to the government depending upon the manner in which it is paid and the complexity which that creates. It is also a matter that we do not believe that Australian practice in this regard, as proposed, is consistent with international practice. To that extent, Louise Fitt has prepared a comparative which Senator Sherry asked for earlier on. So at least you have got one now, which you can have a look at, at your leisure. It effectively shows that, of the nine countries surveyed—three from the Asian region and six from the western economies—release, in terms of voluntary superannuation, or superannuation as we know it, is not an issue and there is no compulsion to make any mandatory contributions. There are social security systems and perhaps Louise can address those later. So they are the four areas where we feel what is proposed is flawed.

We also recognise that, technically, this meeting today is about SHAR and your inquiry is about SHAR, but companion legislation or regulations exist within SIS. Hopefully, whatever the outcome of this, your findings and recommendations to government will follow through in a consistent pattern so that we do not end up with different things under SIS to SHAR.

CHAIR—The terms of reference cover both situations.

Senator SHERRY—But that does not always happen with superannuation—as we discovered with deeming recently.

Mr Feyzeny—So I thought it might be worth stressing that point. What I would like to do is take you back to why the superannuation guarantee was introduced—because that is the crux of the problem here. The super guarantee, as stated by the government at the time, was introduced to effectively reduce social security dependency as we move towards the baby boomer and post retirement period. If we accept that as being the basis for it, then there is a fairly strong argument that the people who are non-residents or temporary residents will not become dependent on our system, therefore, why did the government at the time and the current government insist that these people have contributions made for them?

The argument that has been put forward is that it creates labour market distortions if you allow one class of employee not to be subject to it whilst the broader community is subject to it. I do not think that is in fact supported by the remuneration practice that applies to international executives and, generally, people who come out here. More often than not what happens is that they have a package, they have a total remuneration cost. That remuneration cost will remain static regardless of whether there is a superannuation impost involved or not. So their cash salary will reduce to reflect any superannuation contributions made. That being the case, the argument that there is a labour market distortion is probably incorrect.

The problems that we see at the moment are mainly that there is the retrospectivity element in the legislation. It is quite clear that people who have come out to this country, who have been employed for periods probably ranging from six months to three or four years, were given certain undertakings as to what their terms of remuneration would be and, in fact, they were probably told that part of their remuneration, as previously mentioned, would go into superannuation because it is a requirement under the law, however, they would receive that when they left the country. In any event, when you look at it from a tax perspective, it is more attractive for you because if you are on a higher marginal rate than the tax rates applicable to superannuation you will in fact pay less tax than if we paid it to you in your hands.

That is where there is a cost issue because arguably if you force people to have superannuation and then subsequently—be it now or at age 55 plus—allow them to take

that money, there will be a real cost to revenue. We must ask: why does the Australian government wish to give tax support to people who will not retire in this country? You are allowing them, in effect, to have a concessional form of savings which is meant to be set aside for Australian residents and the Australian population for retirement purposes. So why provide concessions at all in those circumstances.

If you are not going to provide concessions, and it is not compulsory, then nobody is going to contribute to it in the first place. So I think that needs to be addressed. So there was that expectation by these people that they would receive their money on departure. By passing the SHAR legislation and the corresponding SIS regulations, you are effectively saying, 'You can't have your money now. Too bad. You expected to get it but now you are locked in there for five, 10, 15, 20 years.'

Certainly, the view has been that for quite some time now retrospective legislation was a no-no as both governments had agreed that they did not wish to alter people's planning towards retirement expectations or imposts. So I think that seems to be contrary to unwritten policy—but policy, nevertheless—practice.

Ms Fitt—May I also add to the cost issue. Historically, because foreign nationals who come to this country on temporary assignment are already superannuated in their home countries, it is very common for the expatriate conditions to run as follows: the company is already paying for you in your home country and contributing towards retirement funding. Unfortunately, under Australian law, when you get here, we are going to also have to contribute to the Australian compulsory system for you—let us assume you were not a 413 visa, for example. Therefore, many companies contract with their employees on the basis that if they are in fact getting a small extra contribution in Australia they must in fact reimburse that cost to their employer on leaving Australia because the employer has continued to maintain their home country contributions.

Now historically that worked quite well because at the time of permanent departure the funds were released to the employee and the employee then had a separate contractual agreement to return the contributions to the employer because otherwise they would have been significantly better off. The problem we have now, because of the deferral until retirement age, is that the company which has costed the assignment on a certain assumption now may have to wait, as Emery said, five, 10, 20 years to get that reimbursement.

Senator CONROY—The after tax reimbursement or the full tax? How would that work?

Ms Fitt—It is a matter of negotiation between employer and employee, but typically the arrangement is that the employer says, 'I have contributed while you were in Australia \$X into superannuation. That will earn a certain income, there will be a certain tax cost on that, you will get a net amount, but you must reimburse to me, the employer,

the contributions I have put in because, at the same time, I've continued to contribute to your home country plan.'

Mr Feyzeny—Yes, that is certainly our understanding of the matters. There is that almost superfluous need for this exercise. People go through the exercise to satisfy the law as it currently stands, not as it is proposed currently stands and then the money comes back anyway. So you must ask: why start the ball rolling in the first instance?

I think there is also a problem with what is proposed in that the employee sees the money that goes into the superannuation as being something which is almost intangible. They are in this country on a temporary basis and they perceive that anything that is paid that does not, in fact, end up in their pockets by the time they leave is effectively forfeited. It is akin to a social security levy.

Australia does not classify this as a social security levy, however, it has the characteristics of a levy if it is compulsory and you have to leave it until retirement. So the employee says, 'I don't want to know about it. Just maintain my cost.' We believe that, under this arrangement, there is a risk that if there is going to be labour market distortion it will go the other way; it will make overseas labour more expensive because the package that the employee would have come to Australia on will remain static. But he will say, 'Look, if you have to pay something to super guarantee, that's fine. That's the employer's cost. We're discounting any value of that to ourselves,' effectively forfeiting it to the revenue in time.

Sure, some people will not do that and they will keep track of it for 10, 15, 20 years—however long it takes—and they will put their hand out for it. But the likelihood is that in the total scheme of their retirement plans, if they are in Australia for six months, they are not going to chase a couple of thousand dollars many years down the track; they are going to forget about it. If we accept that, then it will fall through to forfeited monies and end up back in the government's coffers. So it will become an uncollected social security levy. So that is another issue.

Senator CONROY—Just on that point. The country comparisons that you have done where you have compulsory contributions required to private retirement plans, did you make comparisons against countries that had that or did you just say something as specific, as we are doing?

Ms Fitt—The nine-country comparison is only addressing non-social security retirement funding. However, it is very important to understand the difference between the two and where Australia fits in that global context. That is what I would like to focus on when Emery has finished his presentation.

Mr Feyzeny—The other problem is, when these temporary residents leave, they leave the money within the Australian system. That imposes an obligation on the trustee

or the holder of those moneys—be it a deferred annuity or an approved deposit fund or an ERF—to continue to track these people to send reports to them, et cetera. In many instances the amounts involved could fall below the thousand dollar small accounts threshold.

If that happens, the Australian members of those funds will subsidise the retention of these moneys. At the very small end, there is a small account balance maintenance issue which has to be addressed because of that legislation. We need to bear that in mind. Is it reasonable that, for those sorts of amounts which would be in respect of short-term secondees, there is a pool of money floating around that is being supported by Australian retirees or potential retirees?

A further problem relates to the taxing of these amounts. Many overseas tax jurisdictions will tax the income earned on the Australian superannuation or deferred superannuation once these people return to their home countries. They will say, 'If you earned \$100 or \$1,000, you now have to pay tax on it overseas.' In the US you would have an obligation to disclose the income earned on your ERF money in Australia. You would then pay tax in the US on an annual basis. When you receive your money in Australia after retirement, you would still pay the Australian tax as well. So there will be a tax impost at two levels, and I do not believe in most instances the tax treaties would accommodate that.

Ms Fitt—In fact, there is a great chance of double taxation in those circumstances on two levels. For example, if I am a US citizen and I have been in Australia for some period of time, I return to the US and I am required to leave my superannuation funding in Australia, those moneys generate income over time. So each year that I am back in the US I am taxable in the US on the earnings in that account.

From a US perspective, under their domestic law, because I am now back in the US and working there, the income accruing is not regarded as being foreign-source income. It is regarded as being US-source income. So the US take the position that they have the right to tax that. However, they regard the superannuation tax and the surcharge, if any, as being not a tax for which the individual is personally liable, so they will give no foreign tax credit relief for that tax.

Several years later when the funds can be released from Australia, and at that point income tax is charged on that release in Australia, you are usually out of time to go back in your US return—because you are only allowed to go back a couple of years—to amend and claim a foreign tax credit for the income tax that was withheld. So, in most instances, you get double tax with no relief.

Mr Feyzeny—Just finally, I would like to focus on Senator Rod Kemp's press release regarding 413 visas. I guess it is a bit like the hardship situation. We find it somewhat unsatisfactory that we are going back to a subjective test that employers will

have to apply in order to determine their super guarantee obligations. Under the 413 visa, if we restrict it to that class, at least it was quite clear that the department of immigration classified somebody as a 413 holder. That is how they came into the country. There was an exemption under the regulations from employers contributing for these people. Now it is going to be people who would have met the standard for a 413 visa.

If you look at the Migration Act definitions on what is an executive, et cetera, it is fairly broad. Employers will therefore have to toss a coin in many instances and decide what is going to happen. Do we contribute for this person, or do we not contribute for this person? How can we classify this person and change their work environment to make them exempt? All sorts of issues like that will arise. If we are stuck with the system that is proposed, certainly a subclass of visa would still be appropriate for the old 413s to ensure that it is black-letter law and that employers do not have to make that call. They can rely on the person's classification on entry to Australia as to the need to make a contribution or not.

CHAIR—Do you think there is a need to widen the 457 to include trainees and specialists?

Mr Feyzeny—Our view is to broaden it right out to say that anyone who comes into Australia on a temporary residential basis should not be subject to the super guarantee requirements. I think that is really what we are putting. In the final analysis, the benefit to Australia of levying a super guarantee charge or a contribution in respect of these people is not justified in terms of the original objectives of the super guarantee, which is to look at reducing government costs for social security on retirement. It is really a substitute for the age pension hopefully.

Senator SHERRY—Not at nine per cent, I would not have thought.

Mr Feyzeny—At nine per cent it is still only getting towards the 25 per cent of average earnings, is it not? That is the objective; I am not saying it is a total substitute. What I am saying is that it goes some way to reduce dependency on social security.

Senator SHERRY—It is a broader issue.

Mr Feyzeny—I take your point, but I guess the point we are trying to make is whether the class of people we are talking about will draw on social security and, if so, to what extent. What is the likelihood of that happening? If it is minimal—which we believe it to be—why is there an insistence on contributions being made for them in the first instance?

Senator ALLISON—Have you done a case study to look at the tax concessions through contributions, how this will work and the bottom line for someone who comes to this country for three months and another one for three years?

Mr Feyzeny—The only thing that we have done is the one that appears in the written submission on page 4 which talks about the impact on tax revenue.

Senator ALLISON—I meant the impact on the individual.

Mr Feyzeny—No, but we could. If you would like us to prepare something for your report, that would be fine. I guess you can look at it from both sides of the ledger—what it means to government and what it means to the individual and to the employer.

Senator ALLISON—Thank you.

Ms Fitt—The paper that I submitted this morning as a supplementary focuses on the issue of global context. What is the Australian regime for retirement funding in relation to foreign nationals compared to what other countries do? A comment was made earlier by Senator Conroy that we have to recognise that throughout the world people do not, as a general rule, share our concept—the Australian concept—of superannuation.

Very broadly, most countries in the world take one of two approaches. They either regard retirement funding as a matter entirely of personal choice, without government intervention, and therefore there is no compulsion. There might be some tax incentives, but there is no compulsion for people to contribute towards their own retirement.

A typical example of those Asian nations is Hong Kong, for example. Obviously there is a much smaller social security net available and therefore there is not pressure yet to require people to compulsorily provide for their own retirement. Those countries, as I say, do not compel either their local nationals or foreign visitors to put anything away in any kind of fund for retirement. If people choose to enter retirement funding in those kinds of jurisdictions, they are without exception allowed to withdraw that when they leave the country permanently.

The other side of the coin is that those countries, typically western, certainly western and eastern European or US or UK, who take the view that there needs to be some form of compulsory contribution towards retirement funding, typically impose social security taxes often at very high levels, much higher than our compulsory superannuation contribution. But what is critical to understand is that those countries recognise that people who are crossing borders are not necessarily going to become a burden on the state in which they may for a period of years be working.

For example, countries such as Austria, Germany and France, which do impose social security levies on individuals, typically have in existence international agreements with other jurisdictions whose rules are substantially the same. Those treaties basically say that if I am a French national who is seconded to work in Germany, for example, for three years then, as long as I am meeting my social security retirement funding requirements in my home country, I will not be required to contribute to the German social security

system while I am there.

The problem we have with the existing Australian arrangements is that we fall in the middle as a kind of hybrid arrangement, because we are not talking about a tax. When we talk about the superannuation guarantee requirement we are not talking about a social security tax as such. That money does not go to the government and sit there waiting against the day that the individual may retire. Rather, it goes into a private fund, either the employee's individual superannuation fund or an employer sponsored fund.

At the moment we sort of sit in the middle. We have something that looks a little like a social security tax but is not really. The compulsion is mostly towards funding into the private sector, if you like. Under those conditions, I submit that we therefore at this stage are far more in line with those countries who do not require compulsory superannuation funding. Therefore, I would submit that at this stage in the development of our superannuation policies we should follow what those countries do, which is not compel foreign nationals to contribute and, if they choose to do so, allow them to take those funds when they leave permanently. As Emery has said, the underlying policy in those jurisdictions is that these individuals are only passing through; they are not ever likely to become a burden on the state. Therefore, we will not impose upon them our views on the need for individuals to support their own retirement.

So the nine-country analysis on the second page of that submission focuses only on the question of whether there is compulsion for individuals to put money into private sector funding. It does not address the question of whether social securities are payable by foreign nationals in those jurisdictions. As I have said, in virtually all of those jurisdictions where there are compulsory social security taxes, as long as the foreign national comes from a country which has an international agreement, there is an exemption for that person during the time they are visiting or working in their host country.

Senator CONROY—Taking the Germany example, if a foreign national is working there and they are not in that comparable situation like France what circumstances then apply?

Ms Fitt—Let us say I come from Australia to Germany, and because Australia is not regarded as having a social security system in many cases I and my employer would be required—and there are some exceptions, depending upon how long I am there and the identity of my employer—to contribute German social security taxes. In effect, for an Australian national and their employer that is a sunk cost because I would have to retire in Germany in order to access those funds. If I did come from a comparable jurisdiction, it works as follows: when I retired in my home country I would be entitled to a pension. My home country would say, 'You contributed 10 years ago to German social security.' They would be reimbursed by Germany to allow them to pay the pension to the individual. Again, there is a very good interlocking—

Senator CONROY—So the Australian working in Germany is disadvantaged—

Ms Fitt—In that instance.

Senator CONROY—They are going to have to leave that money behind when they come back to Australia or move to another country.

Ms Fitt—What we have done, in a sense, is move ourselves into a position where, if we retain the rules that we have at the moment of compelling foreign nationals to contribute and not allowing them to withdraw until retirement, we would have to, as has been proposed, move to a situation of having similar international agreements with many countries. The problem is that we have now entered into this arrangement where we compel foreign nationals to contribute and then do not allow them to withdraw. But it is going to take us many years to establish that kind of international agreement network that other countries have. If you did it all at once, then it would not really be a practical problem.

Senator CONROY—In terms of harshness, if I could use that word, the German situation is, as you say, a sunk cost; it is lost. At least in this proposal they are getting their money eventually. So it is not as harsh as the situation in, say, Germany, France or those other countries.

Ms Fitt—That is correct. But my concern is that we need to look at what the rest of the world does. Since the rest of the world tends to fall very clearly along two separate lines, I would propose that it would be more appropriate for us to pick a side, if you like. Either you go and follow those systems where you genuinely recognise that it is a social security tax and from that a whole series of ramifications come, or you look at other countries which say that we will not interfere with the retirement funding of people who are foreign nationals, who are only in our country temporarily, and who are not going to retire here. I think while we are stuck in the middle we have a case that is somewhat difficult in a world context to defend.

Senator ALLISON—I am interested that you have the US here on your table of comparison. We heard yesterday that it was not possible to withdraw contributions in the States.

Ms Fitt—Let me make the distinction again. Typically, in a US sense, there are two forms of retirement funding. One is what we would class as superannuation in the old sense—a voluntary contribution to what in the US is called a 401K plan. The second type of funding is the compulsory contributions under the Federal Insurance Contributions Act, which is basically a social security tax.

The amounts that go into FICA, the social security tax, cannot be released, and one would have to be in the US and retire there in order to draw on those. But the

contributions that go into what I would call a superannuation fund can be released if they remain in there until retirement age, which currently under US law, I believe, is 59½. Then there is no tax cost or penalty on withdrawal. If you wish to take them out before that age, there is a 10 per cent penalty. In fact, because of the tax treaty we have with the US, you can in effect get out of those penalties as well.

The social security taxes cannot be withdrawn unless or until the individual retires in the US. But those who have gone into an employer sponsored superannuation fund can be withdrawn.

Senator CONROY—What are the characteristics of the US scheme that might be similar or dissimilar to ours? You have just characterised it but it seems to have a lot of characteristics like ours which was also described as a social security tax.

Ms Fitt—You mean the compulsory element under US law?

Senator CONROY—Yes, the compulsory.

Ms Fitt—The elements of that are that it is capped so it is not imposed upon all taxable income. It goes into a general revenue reserve, as I understand it, and one withdraws if one retires in the US basically one's own contributions plus earnings, although there is—but I will have to confirm this—a CPI factor rolled into that. The individual must contribute for at least 10 years in order to be entitled to a pension on retirement at all. I cannot add any more to that.

Senator SHERRY—I preface my question by saying that I think this would be a very small number of people. But what do you do if a foreign national comes to Australia and decides to retire and stay here. There would be a very small number of cases I would think, but what do you do in those circumstances?

Ms Fitt—I would consider first of all that if they do decide to retire here they have one of two options. They can apply for permanent residence in which case, I would believe, they should be treated as an Australian citizen. If they have not sufficiently funded for their retirement then there is an issue there, except of course presumably they have been funding for their retirement in the country from which they came. We would need to ensure they had accessed that funding or certainly declared it for any means tested benefits that we would provide.

They could choose to take out the four-year temporary retirement visa and I am not sure what class that is. There is a four-year retirement visa that allows people to come to this country to retire, but they must keep justifying their self-sufficiency before they are allowed to roll over that visa. It gives them no permanent entitlement to come out here at all and they must justify the amount of income and any assets they have so they would not be taking anything out of the state coffers for their retirement here.

Mr Feyzeny—Obviously from the point at which permanent residency is granted, they would be subject to the same obligations in terms of compulsory superannuation as any other Australian resident. You are only talking of the period from when they first arrive here until they take up permanent residency or effectively go off the visa. I would not expect that period would be, in a total lifetime, very long. It is unlikely because there is a six to eight years maximum. If you come in on a 457 visa you can have it rolled over but I do not think you can have it rolled over indefinitely.

Ms Fitt—No. You would have to make a choice at some time that if you wanted to remain here you would have to apply for either citizenship or permanent residence.

Senator SHERRY—Although if you entered into a relationship with a permanent citizen, it would be easier to stay here, wouldn't it?

Ms Fitt—Our migration director tells us that it is not so simple any more.

Senator SHERRY—It is not as simple but it is still easier but that is another complex issue.

Mr Feyzeny—It is possible; I mean, there is always going to be somebody who is able to finesse the system, whatever system we come up with. The aim is to not impose an arduous complex system on 99 per cent of the population to accommodate one per cent, one would hope.

CHAIR—Do you find the situation with some of your clients where, as a result of the double taxation arrangements, they do not pay tax in this country which is subject to FBT?

Mr Feyzeny—It would only be subject to FBT if a contribution from an Australian fund was going into a non-resident superannuation fund.

Ms Fitt—I have not understood the question, Senator. Could you ask that again, please?

Senator SHERRY—Yes. Under the income tax law, as a result of the double tax arrangements that Australia has with a number of countries, is it possible that particular executives can come here on short terms and not be subject to tax but could have an FBT liability?

CHAIR—Yes. Under the income tax law, as a result of the double tax arrangements that Australia has with a number of countries, it is possible that particularly executives can come here for short terms but not be subject to tax, but there could be a FBT liability? Is that correct?

Senator CONROY—On the salary package?

CHAIR—Yes.

Senator CONROY—Let us say the company has agreed to pay the school fees. That is an FBT under our system, but may not be under an American system. Is that the point you—

Ms Fitt—Again, I would need further clarification, Senator. I am missing the point of your question. I apologise.

CHAIR—That could be essentially income tax?

Ms Fitt—Yes, if they meet the tests under the treaty.

CHAIR—However, they could be subject to FBT? Is that right? Sorry, superannuation goes to SGC.

Ms Fitt—Yes, that would be correct, I believe. Under section 27 of the act they would still be deriving—

Mr Feyzeny—Yes, if they were employees under the Superannuation Guarantee Administration Act, then they would be subject to SG, even though they may not have any other tax obligations. Residency does not come into it, so they could be US tax residents with a superannuation guarantee obligation in Australia. That is correct.

Ms Fitt—But with no income tax obligation on their income.

CHAIR—That is right, yes.

Senator SHERRY—Do you know what happens in other jurisdictions?

Ms Fitt—Again, I suppose you need to look at a particular fact pattern. I could certainly go to a country with which we have a double tax treaty and if I met the tests under that treaty I could escape income taxes. The question would be, you need to look at each individual treaty to see whether the definition of taxes covered by the treaty includes compulsory superannuation, which ours do not, or social security taxes, which those countries that have social security taxes address in those international treaties. But again, because we have this hybrid at the moment, this compulsory superannuation which is not a social security tax, it is not addressed in our treaties.

Mr Feyzeny—There is another aspect of that, and that is that many temporary residents are in fact employed in their parent country, so they do not actually receive income in Australia. And under the Superannuation Guarantee Administration Act, once again, the liability for paying the super guarantee goes back to Tokyo. You can have a fair guesstimate as to how many of those employers are actually paying super guarantee in

Australia. It is probably a very round number. Who has the liability to pay? It is the employer. The employer is not an Australian taxpayer and the employer basically thumbs his nose at the Australian system and says, 'Well, too bad.'

So we have got a distinction between those people who are temporary residents employed in Australia by an Australian company and those who come out here to manage, give advice to foreign corporations, who technically avoid or evade the super guarantee levies you would have in any case.

CHAIR—Because they ignore it?

Mr Feyzeny—They ignore it, because how do you police it from a practical perspective?

Ms Fitt—And there is a jurisdictional issue. Can we as Australia reach out and impose a requirement such as that on a foreign employer whose only connection with this country perhaps is that temporarily they have an employee here?

Senator SHERRY—Only the US tries to do that. But then they are slightly bigger.

Mr Feyzeny—And they do not do it very well either.

CHAIR—Thank you very much for appearing with such technical information.

Ms Fitt—May I just ask, following on from Senator Allison's request for a case study, the timing for that?

CHAIR—Fairly tight, because the committee has to report by the end of the month. Is that possible?

Mr Feyzeny—By the end of next week, if that is okay.

CHAIR—That would be fine. Thank you.

BLUNT, Mr Charles William, Chief Executive Officer, The American Chamber of Commerce in Australia, Suite 4, 88 Cumberland Street, Sydney, New South Wales 2000

CHAIR—Welcome. Thank you for your submission to the inquiry. It is a pleasure to welcome a former parliamentary colleague to our committee. We welcome the submission from AmCham, which we understand is Australia's largest international chamber of commerce. Is that right?

Mr Blunt—Yes, that is right.

CHAIR—We now invite you to make an opening statement.

Mr Blunt—It is a pleasure to be here, and I thank you for the opportunity to appear and to supplement our written submission with some verbal evidence. As the chairman has observed, AmCham is Australia's largest international chamber of commerce. We represent the majority of US companies operating in Australia and also a large proportion of Australian companies operating in the United States. Beyond that, we also have as members companies that could fairly be described as transnationals or foreign companies of other countries such as Japan, Germany, France and the United Kingdom. Hence, while our interests are specialised on the United States, they are a little broader than that and range over the area of international business generally.

Our concern on this particular issue relates to the impact on the expatriate employees of our members. Unlike many of the other submissions that you have obviously received and will hear evidence to supplement during the course of your hearings, I would like to address the general environment in which this change has been made. As the chamber has the capacity to survey our members fairly efficiently and in a timely manner, we sent out a survey to the entire membership. As a result of that we concluded that nearly 800 companies are impacted by this change, and close to 3,000 expatriate employees have some concerns about the changes.

Our primary concern is that the measure is retrospective, and as such is inequitable. It could be construed as an anti-foreign investment measure, and it adds additional cost to doing business in Australia. If you start to think about what that means in terms of Australia's image overseas you can see why it is so serious. Most of the employees of foreign companies that are impacted by this measure are fairly senior people. If they are of US origin, retrospective removal of a benefit is an anathema to them. They find it particularly offensive, and it is most unlikely to occur in a US jurisdiction. They equate that sort of change with the sort of change that you would expect to have in a country that is not democratic. Hence it does nothing to enhance our reputation in boardrooms overseas.

Many of these people are on a career path within their companies, and part of that

career path is an overseas posting. Australia is seen as a good training ground. If, when they return to the US, one of their experiences of Australia is a government decision which retrospectively removes an entitlement and a benefit, it goes into the back of their minds and they have that as a memory of Australia. Much as we had to deal with the image of Australia as having an appalling industrial relations record in the 1960s and the 1970s, I am afraid that in the late 1980s and 1990s the issue that we have to deal with with foreign business in Australia is a fairly cavalier and difficult approach to taxation. This is in the same basket. Whilst it is not strictly taxation per se, it is in the nature of charges, imposts and difficulties in doing business.

I have some of the surveys we received in response to our survey of members. I am not at liberty to actually table them, because we did not indicate that we would, but some of the comments about the government's approach to this issue are extremely negative. It causes us some considerable concern.

CHAIRMAN—Can you share some of them without giving names?

Mr Blunt—Without giving names, yes. To give you some idea of the impact, without being specific, some of the larger companies within the oil industry have 30 and 40 people who are impacted. They are quite often technical people who may be here to supervise the construction and installation of a refinery or some other change, for example. They are here on a very short-term basis. Part of the package to bring these people here is that all of their costs will be met, and there is an expectation that the payment made will be available to the employee when they return to the United States.

All of a sudden that is not the situation, and there is tension between the company and the employee about what was perceived to be a benefit for the transfer and family dislocation and personal hardship associated with perhaps moving a spouse and children from school or college on short term assignment to Australia and then back to the US or somewhere else. The company is then faced with the issue of whether they will compensate the employee for what was going to be a benefit but which under the changes is not going to be available to them.

The other type of example, a far more common one, is for our respondents to indicate that they have one or two senior employees who are impacted by this and that they are very disappointed that the change is retrospective. Some of the comments about the transitional arrangements are, to put it politely, quite rude. They suggest that to have three or four days' notice that there is an opportunity to apply for a return of funding is just a joke. Even that is regarded as cavalier. Hence we have suggested that an exemption be granted to all people who were temporary residents on 457 visas as at 30 June. That would be far more equitable.

Senator SHERRY—Could you provide us with an overview of the comments and feedback? I am not asking you to do it now, but can you give us a list of quotes or

comments perhaps at some future time?

Mr Blunt—I would be happy to do that. To maintain our relationship with our members I would have to do it anonymously, but I would be happy to do that.

Senator ALLISON—Could we also have the questions you put to them?

Mr Blunt—I do not have a blank survey with me, but I would be happy to provide one to the secretary. We basically just invited comment. We asked about the number of employees, how long they were here et cetera, and then we asked for comments. Most of these comments appear in the eight lines that we gave them for comment.

CHAIRMAN—There is some annoyance, but do you think any companies have restricted or are likely to restrict the numbers that come to Australia to get experience? Does it go that far, or is it just concern and frustration?

Mr Blunt—It is a broader issue than the number of people who come here for experience. I think it has an impact on the total investment decision. There are certain very positive factors associated with investing and locating in Australia, and there are a number of hurdles. This is perceived as another hurdle. I would not like to try and quantify the impact that the perception that the government will introduce retrospective changes will have on future decisions, but it is there.

There are very few decisions of government that do not have consequences. There is a longer-term consequence to this decision, in the psychology of American business people, than just the short-term price that will be paid by a relatively few individuals. That is an issue that I feel morally bound to raise with you also, on behalf of the individuals. This may be a decision of government, but we are talking about people, about families who work for a living and who are not necessarily all high net worth individuals and who would perhaps have been planning on having these funds available to them on their return to their country of origin, but the funds are now no longer available, and that will cause some economic hardship.

Senator ALLISON—What is the typical sum of money involved?

Mr Blunt—I do not think that I could put a number on it. In the American experience, most American expatriate executives are covered by their US pension plan and that continues as a result. If you could assume a salary of \$80,000 to \$100,000 with the minimum contribution over a stay of, say, two years, that would give you some number; but some executives may be paid considerably more, and others, less; and they may stay a shorter time. I do not think there is a typical number, but you are talking about \$20,000 or \$30,000.

Senator CONROY—We had an estimate yesterday from a witness of \$85,000 or \$95,000, which is similar to what you have just said.

Mr Blunt—Just to pick a number, over a period of two to three years it might be \$20,000, which is not enough to plan a requirement on but is a considerable amount of money, and it may in fact be one of the perceived benefits of taking the posting in the first place, to compensate for taking children away from their social and educational environment.

Senator SHERRY—You are being fairly critical. Was there any consultation with your organisation or, to your knowledge, with the broader business community about this measure prior to its announcement? Secondly, has there been any consultation since the announcement and, if so, do you have any knowledge of what has occurred?

Mr Blunt—I can only speak on behalf of the American Chamber. There was no direct consultation with the chamber, prior to the announcement: our views were not sought formally or informally. Since the announcement was made in conjunction with the budget, we have made formal submissions to the Treasurer, the Assistant Treasurer and a number of other members of the government, and we have had the opportunity to meet with the Assistant Treasurer to discuss the matter with him and suggest some alternatives.

Senator SHERRY—And those suggestions have not been taken up to date?

Mr Blunt—We have seen no evidence of the government moving in the direction that we have suggested.

CHAIR—And what would you recommend?

Mr Blunt—The first thing that we would recommend to address the retrospective nature of the change is that an exemption from this change be granted to all 457 visa holders who were resident in Australia, on a temporary basis because of the nature of their visa, on 30 June 1997. We think that that would go a long way to restoring equity and, of course, would remove the retrospectivity of it, which I am sure is anathema to many people on a philosophical basis.

In our submission we have made a number of other suggestions. We believe that there should be a general exemption extended to 457 visa holders into the future. You may remember, and I am a long way from being an immigration and superannuation tax expert, that there was an exemption granted to visa holders who were here as 413 visa holders. As a result of work done under the previous government and continued under this government, 413 and 414 visas have been replaced by 457s, but 457s do not have the superannuation exemption that 413 visa holders have. We would suggest that it would be appropriate to extend that exemption to 457 visa holders. We would also suggest that benefits accumulated under contributions here in Australia, which would be minimal if those recommendations were accepted, should be portable to an approved overseas fund.

Senator SHERRY—Just on that last point, do you see a practical problem? Let us

assume that that suggestion was taken up and that they were portable and went into some sort of overseas fund: is there not the practical problem that it is very hard to track what happens to that in the longer term? They could just go into the fund for a few months or a year.

Mr Blunt—It depends on the nature of the fund. Again, you would need to speak to someone who has got specific knowledge of a given jurisdiction; but, as I said, it is an approved fund which may have preservational requirements which are acceptable to the Australian government.

Senator SHERRY—But what about the tracking and the time necessary? I have thought about that issue myself but, in reflecting on it and looking at some of the submissions over the past few weeks, it seems to me that, practically, that is very difficult to do.

Mr Blunt—Can I ask rhetorically: is it an Australian government responsibility? We are talking about a temporary resident who is a foreign national. Is it not the responsibility of that national's government to worry about the retirement income policy that will impact on that person?

Senator SHERRY—Yes; but I would suggest practically that I do not think, frankly, that foreign governments are going to be taking a lot of notice of a requirement to track what occurs as a consequence of an Australian government taking a decision.

Mr Blunt—Once the money is in place in a foreign retirement regime, the requirements of that regime will apply, and they are the requirements that should apply to a national of that country. If it is the United Kingdom or the United States, there are certain well-established and fairly rigid requirements that apply to their retirement income plans. I do not have any specific knowledge of any country; I have got a general knowledge of the United States. The US scheme has been in place and is well supported. It is supported by the tax code, and the majority of business people participate in the scheme and provide for their retirement in that way.

CHAIR—As there are no further questions, I thank Mr Blunt for appearing before us today.

Luncheon adjournment

[1.32 p.m.]

BAILLIE, Mr William Peter, Partner, Greenwood Challoner and Company, Level 29, 133 Castlereagh Street, Sydney, New South Wales 2000

CHAIR—Welcome. Thank you very much for appearing before the committee. We invite you to speak to your submission.

Mr Baillie—Perhaps initially I should make some corrections to the submission, which was prepared fairly hastily. There are just three minor errors. On the first page, at 1.1, the effective date of the super guarantee legislation should have read 1 July 1992. That needs to be corrected. Re page 4, paragraph 2.3, where I refer to the Australian Broadcasting Commission, you are probably aware that very recently the orchestra division of the ABC has been transferred and is now operated by a separate company called Symphony Australia Holdings Pty Ltd. Whether that is a cosmetic or an actual change I am not sure, but certainly legally there is now a different operating vehicle. On page 9, paragraph 3.5 gave some arithmetic examples. On line 3, where I refer to the Australian taxable income exceeding \$94,520, that figure should be \$88,910. Going down to line 6, where I refer to a figure of \$70,000, that figure will be the indexed figure of \$73,220—just for technical correctness.

CHAIRMAN—Would you like to speak further to your submission and highlight the areas where you have the most concern?

Mr Baillie—Perhaps I could summarise the summary in my submission. As a background, this was made at the suggestion of Mr Greentree, the research officer who saw my letter published in the *Australian Financial Review*. The real agenda I had was the irrelevance of the super guarantee legislation applying to non-residents who are visiting very briefly. But, to fit in with the terms of reference of the Senate committee, the submission addresses itself to the availability of the payment of their benefits when they leave Australia permanently. I think the submission very much sets out the basis of the point I was trying to make, which is simply that it did not seem to me and my firm to be a relevant factor in the government's policy decision to introduce the legislation to apply to very short-term visitors coming to this country.

CHAIR—You state in the summary of the submission that you want deleted from the bill reference to it relating to persons who have not been residents of Australia for income tax purposes for a period of, say, five years prior to the date of payment of superannuation benefits. From that, I gather you are seeking to exempt from the superannuation guarantee charge not only specialists, middle managers and top corporates who come here creating employment in Australia, but also people who may come into the arena of entertainers, sports people and the like.

Mr Baillie—Yes.

CHAIR—Most of the submissions to date have had three categories—firstly, Australians who are resident here and who go abroad; secondly, ex-patriots who come to work here for short periods of time and who are skilled experts or trainees; and, thirdly, other people who might be income takers, such as entertainers, sports people and the like. You basically want all ex-patriots—including the sports people, entertainers and so on—to be exempted from this superannuation guarantee charge. That is really a step ahead of everybody else.

Mr Baillie—Probably, it is.

CHAIR—Why do you want to go that far? These people will be subject to normal tax on their earnings when in Australia. If they are subject to a normal earnings index, why shouldn't they be subject to the superannuation guarantee charge?

Mr Baillie—An answer to that is that one of the examples I have given further in is that, up to the date the legislation changed—1 July—they were in fact better off being subject to the charge and then receiving their benefit from the funds when they left Australia. The overall tax rate is less than they would have paid if they had been taxed on their full amounts.

CHAIR—Yes.

Mr Baillie—But I suppose that is not really an answer to your question. I am extrapolating, I guess. My view is governed by the situation of my two clients. The stated policy of the government was to provide for the ultimate retirement of people who are employed in Australia. It just seems to be rather irrelevant to require a superannuation contribution to be made—particularly for somebody who is fairly young—for a person who is possibly only coming to Australia for a period of two weeks.

CHAIR—Would you have any objection if they could get it back or if it could be paid into a superannuation fund in the country of their origin?

Mr Baillie—No, not at all.

CHAIR—Would that be a solution, rather than making it a blanket exclusion?

Mr Baillie—It certainly would, yes.

CHAIR—Have you had any experience with the 413 visa?

Mr Baillie—No. It has been limited to entertainers and sports people.

CHAIR—Does it affect these sorts of people wanting to come to Australia?

Mr Baillie—The existence of the charge?

CHAIR—Yes.

Mr Baillie—No. Again, I suppose an observation of my submission might be that it is slightly in conflict with the terms of reference of the Senate committee in that it related to the effect it might have on middle and low income earners. It is probably fair to say that the people we are talking about probably do not fall into that category. I am quite sure that, in most cases, their appearance in Australia is governed by their agents or their managers. Probably, personally they are not even aware that this exists.

However, it does cause a further difficulty when the contracts are negotiated with these people and you have to explain that this charge exists and it has to be allowed for in the basis of the contract. Certainly, in the case of the ABC—which, as I mentioned, brought out over 90 people in the last financial year—they found it administratively fairly annoying. That is probably the right word; it is not an insurmountable problem.

In negotiating a fee with a Sir William X, it is difficult to say, ‘Your fee will be \$2,433 for each performance, and we will put \$67 into a superannuation fund for you. But don’t worry about that because, when you leave Australia, you will get that back.’ That has been the position up until now.

CHAIR—You have associations with the company that is now managing orchestras around Australia?

Mr Baillie—We were engaged by the ABC to look after the lodging of the tax returns and the handling of the logistics of getting the money back.

CHAIR—Have they made any comments to you about the problems associated with it?

Mr Baillie—Yes.

CHAIR—And what were they principally?

Mr Baillie—They overcame the difficulties up until 30 June 1997, because it was explained that the money would be refunded. But they do foresee significant ongoing problems if the legislation with the contributions stands and the bill goes through as proposed. If they were negotiating a fee with a performer for, say, \$20,000 for his tour of Australia, up until now they could limit their cost to \$20,000 by explaining, ‘We’ll pay you \$19,200 and \$800 will go into a super fund.’ From now on, they feel they will probably have to pay the \$20,000, plus they will have to be responsible for the superannuation contribution.

CHAIR—Could it affect any performer who might otherwise come and play with the orchestras? Would it be an impediment to that extent?

Mr Baillie—I do not think so. I think the thrust of the argument is that it will just be an additional cost to the orchestra company.

Senator CONROY—Would your performers tour through Europe as well? Would they get attached to European orchestras?

Mr Baillie—Certainly. I think it would be fair to say that the people who come for the ABC tours are international artists and they have a worldwide commitment.

Senator CONROY—We heard evidence this morning that, in a number of European countries, they have something which is not called a SGC but is a social security taxation. How do they deal with that if they are performing in Germany?

Mr Baillie—I do not know.

Senator CONROY—The evidence we got this morning was that in effect it was a sunk cost. It was just paid, and if you left the country, you were unlikely to get it back unless you had a comparable system in the country of your residence.

Mr Baillie—I am not aware of how that works, I am sorry.

Senator ALLISON—I have a question about your comment on the requirement to have a tax file number. Is that for the purposes of superannuation?

Mr Baillie—Yes, it becomes very necessary for superannuation. Historically, in the ABC's experience, because they have such a large number, they are fairly well organised.

They ensure that, when they make first contact, they have a young lady who spends a lot of her time just looking after the visiting performers. She arrives when they come to their hotel with a whole pile of documents. She has to borrow their passport, which often causes a problem, because they get nervous if it gets taken from them. She has to photocopy that. They have to fill in the tax file number application and that has to be lodged and a tax file number issued, because when they leave the country, they then lodge a tax return and they lodge an application with the JEST superannuation scheme—which is the entertainment industry fund—for the repayment of the benefit. If you do not have a tax file number, then the tax retained is 47 per cent, and that causes an ongoing logistic problem in getting that back eventually.

There is a fairly strong obligation to get a tax file number. Historically, the Tax Office have been fairly flexible—I hope I am not causing them a problem with this—with non-residents coming for just two weeks. They do not require them to make a formal

application. They issue the tax file number automatically.

CHAIR—So for golfers who come in and who are likely to take out significant prize money, their position will be that that will have to be held over until they retire. Is that correct?

Mr Baillie—For the superannuation?

CHAIR—Yes.

Mr Baillie—Yes. As it is proposed, that is the case, yes.

CHAIR—For a champion like Tiger Woods who might come here for the Australian Open, that could be a significant amount of money if he won the prize money that went with it.

Mr Baillie—The prize money is not subject to the guarantee levy.

Senator CONROY—Would the appearance fee be subject to it?

Mr Baillie—The appearance fee is. The prize money initially was, and the tax office issued a preliminary indication that they viewed the prize money as being subject to that, but there were submissions by Tennis Australia and by the Professional Golfers' Association, or the Australian Golf Union, at the time the legislation was introduced to the then minister for sport on the basis that they thought it was unreasonable that prize money should be subjected to it because prize money is something you win, it not something you get paid for performing a service. So prize money was exempted but not appearance fees.

CHAIR—With these sports people entering, do they enter under a 413 because they are not full time, are they?

Mr Baillie—I do not think they have a 413. I am not sure of the number they have, it is another type of temporary entry visa.

Senator SHERRY—Would they need a visa? They are only here for a very short period of time, usually.

Mr Baillie—I think they do. Certainly the entertainers need a visa because that is very fiercely monitored by Actors Equity.

CHAIR—Would not the people who play for the ABC be regarded as entertainers—pianists and cellists?

Mr Baillie—Depending on your definition of entertainment, that is correct, yes.

CHAIR—Would you like to make any concluding remarks, Mr Baillie?

Mr Baillie—I do not think so, other than to reiterate the thrust of the submission, that the availability of a repayment should continue and it should not be eliminated.

Senator SHERRY—You referred specifically to the consultation with the previous minister for sport about some potential problems associated with the SGC which, apparently, were resolved. Was there any consultation before the announcement of the decision in respect to this issue, and has there been any consultation since the announcement?

Mr Baillie—Do you mean the recent one or going back to the previous one?

Senator SHERRY—No, the three issues we are dealing with here today.

Mr Baillie—No, I am not aware of any. That is probably because it is a fairly special area. It is a very narrow field of people that we are talking about.

Senator ALLISON—What is the visa applying to a sporting figure when coming to this country?

Mr Baillie—I am not sure of the number, or the section.

CHAIR—Thank you for putting in a submission about people who play in the orchestra, and sports people and entertainers.

[1.50 p.m.]

MALCOLM, Mrs Elke, Manager, Administration—Corporate Markets Group, Mercantile Mutual Life, 347 Kent Street, Sydney, New South Wales 2000

WILSON, Mr Matthew John, Corporate Lawyer—Superannuation, and Manager, Mercantile Mutual Custodians, Mercantile Mutual, 347 Kent Street, Sydney, New South Wales 2000

RASMUSSEN, Mrs Theresa, Manager, Administrative Services, Outokumpu Mining Australia Pty Ltd, 1st Floor, Burswood Court, 141 Burswood Road, Burswood, Western Australia 6100

CHAIR—Welcome and thank you for your submission. We found it helpful in appreciating the effects on an international company of the changes to the preservation rules. There are quite a number of submissions of similar pattern which have been supported by others like KPMG and Price Waterhouse yesterday.

We appreciate the fact that you have come to us and we certainly acknowledge the manner in which your company encourages new graduates to learn from experiences in our country. As a parliamentary committee, we would not want to see the implementation of any policies that might be retrograde in terms of such people gaining experience in our country. I ask you to talk to the salient features of your submission and then we will ask you some questions.

Mrs Rasmussen—We have prepared a script. If it is all right with the committee, we will read from our script.

CHAIR—Certainly.

Mrs Rasmussen—Firstly, we would like to thank the Senate select committee for the opportunity to give oral evidence. I would like to start by providing the committee with an introduction of our company. The Outokumpu group is a versatile metals group operating worldwide and employs approximately 14,000 people. The Outokumpu group is one of the world's leading base metals producers and exceptional in the extent of its technological diversity and vertical integration in several metals.

Outokumpu is a publicly listed company in the Helsinki stock exchange, with the Finnish state being one of its major shareholders at 40 per cent. Outokumpu Mining Australia is a wholly owned subsidiary of Outokumpu Mining Oy in Finland, responsible for base metals business area in Outokumpu. Outokumpu Mining Australia employs approximately 200 people, including contractors. Our total investment in Australia, since the establishment of our Perth operations about seven years ago, has been over \$A300

million and generated exports from Australia of approximately \$A250 million.

Our presentation today will be a two-part presentation. I will be representing Outokumpu Mining Australia as a practical user of the SG and Mrs Elke Malcolm, administration manager of corporate superannuation from Mercantile Mutual, as fund administrators of the Outokumpu group superannuation plan. I will not repeat the provisions of the bill as, by now, everyone is fully aware of it. We agree with the three principles of the bill, however, we believe that the requirement for early release of superannuation benefits until preservation age should not apply to non-Australian residents.

Our company employs about 11 expatriates a year in Australia mainly from Finland for two- to four-year periods. At the end of that time, these highly skilled specialists usually return to their home country or take up another foreign assignment in another country. From time to time, the temporary residence visas are extended for another short period. We also provide occupational training for about three Finnish undergraduates a year, and they spend three to six months in Australia. Overseas professional development and training opportunities are also available to Australian undergraduates and our local employees. So it is a two-way process.

It is Outokumpu's policy to support home country pension system wherever possible. As far as I am aware, most multinational companies employing expatriates adopt a similar policy. The majority of Outokumpu's expatriates would not fall under the former visa class 413 executive but under the former visa class 414 specialist. Therefore, we are obliged to make SG contributions for those temporary residents, at the same time contributing to their home country pension.

One must look at why SG was first introduced—that is, 'To ensure that as many Australians as possible have access to superannuation and to provide higher standards of living in retirement for future generations of retirees.' We urge the government not to lose sight of these objectives. Temporary residents are not permitted to stay beyond the duration of their visa and therefore cannot retire in Australia. It is Outokumpu's considerable experience that the cost of employing an expatriate versus a local, including repatriation, is over 200 per cent higher and the annual cost of employment is about 45 per cent higher for an expatriate. Therefore, the concerns raised in the government's press release of 25 June—that granting employers exemption from SG contribution will make temporary residents cheaper to employ than similarly skilled Australians—holds no ground in the case of Outokumpu. Anyway, the high cost of employing expatriates has no effect on whether their superannuation contributions are preserved until preservation age or not.

The arbitrary date of effectiveness of these restrictions makes it virtually impossible for employers to plan an effective and reliable employment agreement with its employees, particularly when the rules can be changed retrospectively. Should the government persist in going down the track of withholding SG contributions until preservation age for temporary residents, we strongly recommend that those expatriates

whose visas were granted prior to 1 July 1997 should not be affected as our expatriate policy, forming part of the employment contract, was made on the basis that the superannuation funds may be accessed upon their repatriation.

The Australian government in the same press release also indicated that it would set up reciprocal arrangements with other countries for transfer of preserved benefits to approved retirement funds. Outokumpu has over the years been actively exploring ways to achieve this and has met with Finnish government representatives on this issue. The calculations of benefits in the Finnish pension system is totally different to the Australian superannuation system. The Finnish system is based on contributions, service period and pension rights, whereas the Australian system is an investment savings plan. It was therefore concluded at the meeting that a workable agreement would take years of negotiation between the two countries and would be quite difficult to achieve.

We appreciate that it is never possible to make superannuation arrangements universally equitable. However, circumstances where Outokumpu is forced by law to contribute to an Australian superannuation fund on behalf of these expatriates, who are unlikely to be resident in Australia at the time of their retirement, seem grossly inequitable. I will hand over now to my co-presenter, Elke, who will speak on the practical problems associated with the restrictions on early release of benefits for non-Australian residents.

Mrs Malcolm—I would like to support Outokumpu's submission regarding the payment of superannuation benefits to expatriate members leaving Australia permanently. It is extremely difficult to avoid requirements to pay superannuation contributions. It is only the employees covered by class 413 visas who are exempt or where the salaries are under \$450 per month, now increased to \$900 per month. In fact, for employers it is difficult to administer this particular requirement, so the need not to pay SG contributions has largely not been followed.

Unfortunately, this change to legislation is both inefficient and costly, both to administrators and members. Those affected will be young overseas people on working visas travelling around Australia, executives on secondment and specialists brought in on short-term contracts, such as engineers and academics. For example, a company may bring out a graduate for a four-month period of work experience. If such a graduate earns \$3,000 per month for that four-month period, then the government will lose about \$130 in tax if the graduate is not able to take the superannuation benefit on leaving Australia. The actual benefit would be less than \$1,000 so member protection would apply. In that case, no interest would be payable as the interest would be used to offset fees.

If the average age of these graduates is 25, then by the time they get to preservation age the benefit would have lost its value. It has always been quite difficult to keep track of an itinerant work force such as undergraduates who take casual jobs for three months. Typically, after 90 days many administrators transfer any such benefits to an

eligible rollover fund. The other two categories, the executive and the specialist, probably will remember to claim their benefit and will therefore be exempt of all tax requirements because the benefit will not be high enough to attract tax.

As another example, where an engineer is brought in on a four-year contract, if we assume an average salary of \$80,000 per annum and an average age of 45, then at the end of that period, assuming an eight per cent per annum return less fees, contribution tax and life insurance, the benefit will be worth around \$16,900. This would mean a loss of tax revenue at the time of leaving Australia of around \$3,650. In this instance, interest would continue to accrue but, as the benefit at preservation age would remain under the tax threshold, tax revenue would be lost. From research we have carried out it would appear that in New Zealand no superannuation contributions are paid for non-residents. In the UK there is the ability to opt out.

As far as keeping track of the members is concerned, this can be quite costly. Members are still required to receive their annual statements. This means posting information overseas, updating records for change of address and reporting of lost members to the Commissioner of Taxation. At some time in the future when a benefit should have been paid—that is, at retirement—and the member cannot be found, then it becomes an unclaimed benefit. At that time the trustee must make reasonable attempts to find the beneficiary and if they prove unsuccessful the money must be paid to the respective state or territory treasury. All of this will again cost money to administer and the cost in comparison to the amount involved will not be economical.

Our experience with transferring benefits from overseas arrangements has been fraught with intense administrative processes, overcoming jurisdictional boundaries such as different rules and regulations in various countries, and a lack of understanding of the various superannuation systems by local and overseas fund administrators. One reason for this is the constant changing or tinkering with each country's system of superannuation and social security. Standardisation is very difficult: there is no established protocol and each case has to be handled from the ground up. Quite clearly, the administration cost for this type of transaction is not viable from the member's perspective. Any system of bilateral agreement would soon become outdated and cumbersome for governments, fund administrators and trustees and, last but not least, would not be understood by fund members. Quite clearly, a simple, realistic approach is necessary.

We recommend that where a permanent resident or an Australian citizen permanently depart Australia, the benefit be held here and only be paid out at the preservation age. On the other hand, where a non-resident non-Australian leaves Australia permanently, it would be more cost-effective for both the government and the administrators to be able to pay out such benefits at time of departure.

Mr Wilson—I reiterate the comments of my colleague. The committee has seen the issue here with the trigger of nationality and expatriates having a short-term duration

in Australia. The rules need to be characterised around the terms of citizenship or nationality. In our view the expatriates have not abandoned their domicile in their home country and hence they are still subject to the system of social security or superannuation in their foreign jurisdiction.

From our experience it has not been easy to integrate the Australian system with the overseas system. The overseas systems can be based on a series of pension rights whereas the Australian system is based on a money purchase basis.

We find that there is increasing globalisation around the world, not only in Australia but in foreign countries. We see that with our own organisation. We have staff on secondment to Holland and staff from our operations in the Netherlands coming to Australia.

Mrs Rasmussen—I would see that as Mercantile Mutual rather than Outokumpu Oy.

Mr Wilson—The experience here is that there are long-term established pension arrangements in the home country. Quite clearly to us the current minimum superannuation requirements in Australia, that is the superannuation guarantee, represent a double arrangement for expatriates.

We note that the current SIS laws do not permit the trustee to transfer out to a foreign superannuation fund. The current laws only recognise the transfer within the Australian superannuation system. Thank you.

CHAIR—I gathered from your presentation that you would like an exclusion far wider than expatriates who just come here to work, say, in mining or provide specialist advice. Would you also like to include entertainers as well?

Mrs Malcolm—Yes. That would seem reasonable because they would be here for a very short term, maybe even less than a week sometimes. When you look at somebody like Elton John, he would be here for a week.

Mr Wilson—The notion that I have in my mind from the superannuation fund trustees' perspective is that these people have a very short stay in our jurisdiction so there is no connection with a longer-term retirement plan. My understanding is the nature of the visa is generally of a short-term nature, as opposed to citizenship or permanent residency.

CHAIR—Do you not think there might be problems with Actors Equity and the trade union movement if these people are seen to move into Australia and effectively take jobs?

Mrs Rasmussen—In the case of Outokumpu?

CHAIR—I recognise there is a distinction between bringing people in where you have companies in Australia because there is a big cost of bringing people in. When entertainers come in, there is not perhaps that big cost, is there? There could be a deemed threat or suggested threat to Australian employment. We acknowledge that it appears that for most companies equivalent to yours, there is a real cost in bringing these people here but there would be sections of the Australian community who would be concerned that if you opened it up too widely, as has been suggested in the oral presentation, it could lead to loss of Australian jobs.

Mr Wilson—I understand the point is that there is selection against the Australian worker in that situation. I think from our experience in managing corporate superannuation, there is the employment cost or total package cost concept in quite a large section of the Australian community and that superannuation is merely a component of the overall employment cost. I do understand your concern in respect of employment arrangements where the total employment cost may not be an issue or may not be a basis for employment.

Mrs Rasmussen—From what I understand in dealing with visas for overseas employees coming here to work, the immigration criteria for issuing a working visa is quite stringent. Even an entertainer, although it is out of my scope of experience, who is to come to Australia to work needs a visa and needs to meet immigration requirements.

CHAIR—That is right.

Mrs Rasmussen—Therefore, in order to get a visa you first have to prove that no Australian is disadvantaged. That is the criteria for the granting of a work permit.

CHAIR—That is true. It is an interesting point of view just how far that exclusion should go if we are going to go down that track.

Senator SHERRY—I just wanted to thank you. I think yours was the first submission I got on my desk after the announcement. It was very prompt. Whilst I did certainly perceive some problems with the government's announcement, you drew our attention to it more smartly than anyone else I could recall in recent times. In respect to the people that Outokumpu has working in Australia, they are obviously on some sort of negotiated package while they are in Australia?

Mrs Rasmussen—Yes. In the case of Outokumpu, we tried to adopt a local policy system where we try to match salaries with our local employees as well. But we recognised that expatriates do not have access, for example, to Medicare—as our local employees will have—and expatriates personally incur additional costs in maintaining their home in their home country and their ties with family and friends. Therefore, we do subsidise, if not pay, for some of those personal commitments that they have with their home country.

Senator SHERRY—We heard this morning that in a number of the agreements—and I am interested to know whether it is the case with your agreements—when a person goes back to their home country they have to refund the SGC repayment to their employer. Is that the case with your company?

Mrs Rasmussen—No. With Outokumpu, as we have said, our policy is to adopt the home country pension system. We do pay a 20 per cent contribution to the Finnish pension system. The employee is required to salary sacrifice 4.3 per cent to the home country system as well. When they repatriate, they have access to the superannuation funds and they take it with them as a sort of compensation for the foreign assignment and displacement of their family and for resettling back in to their home country. There is always an element of start up costs that the person has to be responsible for.

Senator SHERRY—Is that documented in the agreement with respect to their package of conditions?

Mrs Rasmussen—It is actually communicated to them that, under the current legislation or the previous legislation, they will have access to those funds. To mitigate that feeling of being hard done by, especially if it is retrospectively introduced as of 1 July, it makes it very difficult for us. There is tension between us and our employees as well.

Senator SHERRY—That was the issue I was leading into. We have a situation, in your company and a range of other organisations who have given evidence, that there are agreements with people who are currently resident in Australia for whatever the length of time. We now have a change in legislation that overrides those agreements. If you were to go down this track, it would seem a more reasonable approach—if you were to go down this track—that it should not take effect until those agreements lapse. It may be more appropriate to ensure that they commence from a future date when a person actually comes to this country rather than affecting current temporary residents.

Mrs Rasmussen—Yes, we strongly support that from a contractual commitment point of view. If the government persists in withholding SG to a preservation age, then it should not be retrospective; it should be for any future expatriates to Australia—in the case of Outokumpu.

I would like to add that Outokumpu, as responsible corporate citizens in Australia, fully supports the SG system for our local employees. That is why we have an internal policy that the company contributes three per cent to SG and the employee will contribute four per cent to SG. We are committed to funding Australians in their retirement age. However, for expatriates who are not retiring in Australia, and we are contributing to their home country pension, they should be exempted.

Senator SHERRY—I should congratulate you. Your policy is remarkably close to

our previous government's co-contribution system four and three on top of nine.

Mrs Rasmussen—One has to prepare oneself for the future.

Senator SHERRY—Although, I shuddered when I heard your contribution rates in Finland—20 and four. We still have a long way to go.

Mrs Rasmussen—We also offer a service reward. We increase SG contributions for employees who work for us for five years or more. Thereafter, every two years, they get an extra percentage contributed as well.

CHAIR—What is the maximum SG contribution a person could get?

Mrs Rasmussen—In the year 2002, when it is at its maximum nine per cent, the company will contribute three per cent and the employee's salary will sacrifice four per cent. If they have a service reward it is extra on top of that. The service reward is totally different from the SG legislation and the company's policy.

Senator CONROY—There would be a cap on it?

Mrs Rasmussen—Yes.

Senator CONROY—If you worked there for 20 years, presumably, they would not make two per cent for every year or two years.

Mrs Rasmussen—The reason why I cannot give you the percentage is that management has a different percentage for award employees versus normal staff in our policy.

Senator CONROY—We heard some evidence this morning, which I think both of you might have heard, that some of the European countries have a social security tax. Is Finland in the same position? Is it one of those countries where if a Finn worked in Germany and then moved back home that money would be transferred out of the German social security system and followed the individual back to Finland?

Mrs Rasmussen—I think the EU is a totally different ball game. But in the case of Finland and Australia we have looked at ways of rolling over the SG. Last year I met with the Finnish pension representatives. They do not have any mechanism for lump sum rollovers because the way they calculate their benefit for the life of the person after they retire is very different from the way we do ours.

Senator CONROY—The point was made that the money that was contributed by, let us say, an Australian expatriate's employer into the German social security system is, essentially, a sunk cost, it is gone, you cannot get it back unless you can transfer it into an

identical and comparable system. So I am really asking: is your Finn expatriate who works in Germany able to take the compulsory contribution that they have to make into the German social security system and bring it across or is it lost?

Mrs Rasmussen—I do not know about Finland and Germany. But we have an Australian expatriate in Finland. Normally it is compulsory to contribute to pension regardless of nationality in Finland because it is a government funded pension, unlike this one which is managed by the private sector. However, we were granted exemption because there is no treaty between Australia and Finland. The Finnish system granted exemption to our Australian employee from the total contribution.

Senator SHERRY—On that treaty issue, the government has said that there should be negotiations with other countries. I have to say that until I read your case Finland was not a country from which I thought we would have persons affected. But it would obviously take a long time to negotiate agreements with all the countries, particularly the mining sector which is a very international sector and a major sector Australia is involved in.

Mrs Rasmussen—As far as I am aware, about two years ago the social security departments between Australia and Finland were negotiating some sort of bilateral agreement. However, last year it stopped because it was just too difficult to achieve. I understand that a new proposal from the Finnish government was tabled recently with the Australian social security department. However, I am not sure whether it includes pensions.

Senator SHERRY—Notwithstanding that, given the problems of Finland, for Australia to negotiate agreements with hundreds of countries would be extraordinarily difficult to do within the next 10 years, I would have thought.

Mrs Rasmussen—As Elke has said in her presentation, even if you come to some sort of agreement with another country, it is like trying to hit a missing target because everyone keeps changing their legislation.

Senator SHERRY—And governments.

Mrs Rasmussen—Yes. As soon as you come to an agreement it changes again and you are back to the drawing board.

Mr Wilson—We find many of our overseas transfers very tedious. If we try to get money into the Australian system a lot of administrative work goes into, firstly, educating the overseas jurisdiction on our system and exactly how it works and it is a money purchase basis. We have had some success with the UK, but we do not try any others. By way of operation of our superannuation laws in Australia we cannot transfer moneys out of the Australian superannuation system. So we do not have that two-way street at the

moment. I think the administrative process would be quite intense in administering each arrangement between each jurisdiction to ensure that there is no unintended leakage out of the Australian system for, for example, Australian citizens going overseas.

Senator ALLISON—Can I ask a general question about the Finnish system? Is it based on annuities or is there a lump sum arrangement on retirement?

Mrs Rasmussen—Let us say that each year you work you accumulate 1.5 per cent. On retirement they do an average of the last 10 years contribution against your accumulation of years worked. So if you worked for two years it would be three per cent of your average of the two years, but the maximum is 10 years. The maximum is, I believe, 60 per cent.

Senator SHERRY—There must be a minimum payment surely for people who are not in the work force for any length of time.

Mrs Rasmussen—If you are working for, say, two years and you accumulate three per cent, then you stop work for five years and the calculation stops and then you commence employment again, how do you calculate it? It is three per cent of the average of the last two years and then nothing for five years and then whatever percentage you start afresh—they will do A plus B.

Senator SHERRY—What about, for example, women particularly who are not in the work force for as long as men often for family reasons? Some people would never work at all presumably. There is some minimum guaranteed pension, I assume, in those circumstances.

Mrs Rasmussen—The social security system in Finland is extremely generous. For a woman who for family reasons stops work, the government pays her to look after the children at home for a set period of time. Even if someone is unemployed, the government social security system does look after them and there are also all sorts of complex employment benefits. If you are part of a union and then become unemployed, the union will support you during your unemployment period with—I believe, I am not sure—a percentage of your usual pay.

Senator SHERRY—This is outside the current terms of reference but what is the age at which the pension is payable in Finland?

Mrs Rasmussen—It is 60 or 65. I think it is 65. In their case it is a true pension system managed by the government.

CHAIR—Thank you very much for a very interesting presentation.

Mrs Rasmussen—Thank you for the opportunity.

CHAIR—We will send you a copy of our report.

[2.52 p.m.]

DAVIDSON, Mr Peter Andrew Geoffrey, Senior Policy Officer, Australian Council of Social Service, 4 Yurong Street, East Sydney, New South Wales 2011

CHAIR—Welcome. Yesterday we heard some very compelling evidence given by a witness who is a financial consultant to disadvantaged people who fall on hard times. We asked the witness to give us some practical examples, which were very helpful—recognising that many of these people will never get the full benefit other than falling back on the security net. I presume this is an area which is very close to your heart.

Mr Davidson—It is indeed.

CHAIR—If you intersperse examples wherever possible, it will help the committee remember the problems. We thank you for your presentation and invite you to talk to it and to highlight areas where you think there may be difficulties.

Mr Davidson—Thank you. I will be brief. Our submission specifically addresses the issue of early release of preserve benefits on hardship grounds. This is a vexed area and one which I have had some involvement with over the past four years or so. I was involved in an ASFA seminar four years ago, and then a few years ago we participated in a review of the ISC's hardship guidelines, which was conducted by the consultants Ageing Agendas. We are aware that there is a need for early access on hardship grounds. We are also aware that the present system is lacking in objectivity and fairness.

CHAIR—When you say the present system, are you talking about the new rules that have just come out?

Mr Davidson—I am talking about the system prior to the new rules that came out. The new rules lack fairness in other respects—and I will come to that shortly- but I was talking about the previous status quo. I am sorry.

There is a strong case for applying a consistent set of income and assets tests to determine hardship and for using the Department of Social Security rules for that purpose. Many people have thought that for quite some time. There is also a case, on similar grounds, for using a single administrator to administer such rules—whether that is the ISC or the new Centrelink Agency acting on its behalf.

We have grave concerns, however, regarding two aspects of the new rules. One aspect is the application of other aspects of the Department of Social Security rules to early release—that is, above and beyond income and assets testing. I refer, for example, to activity tests for unemployed people and tests of residency, both of which deny people who may in certain circumstances be living in hardship access to certain pensions or

benefits. I am not going to argue the pros and cons from a social security point of view of those rules, but we do not think it is particularly appropriate to apply them to private superannuation.

CHAIR—But how do they impact on superannuation?

Mr Davidson—If early release is confined to people who have been in receipt of benefits for that period of time, then someone who has been denied benefits on those grounds would not have early access to their super, either.

CHAIR—Because they failed the activity test.

Mr Davidson—Or residency tests, for example. There are a range of other tests that apply, and some of them are very complex and elaborate. In order to receive income support you not only have to be in hardship, you have to meet a number of other requirements.

Our second concern is the 12-month requirement—or, I believe, 39 weeks in the case of those over 55. To provide a bit of context, we have argued consistently, including before this committee, that superannuation should be broadened to cover other long-term saving needs, and we have made submissions on that. I do not intend to address that issue, except to say that we do not regard early release on hardship grounds as a backdoor route towards achieving those ends. We do accept that the rules need to be reasonably tight. We would support the use of the standard social security income and assets test as a hurdle which people must cross before they can attain early access on those grounds.

The two problems we have are, firstly, the extension of those other social security rules in effect to access to private savings, given that in Australia—unlike in other countries, which have government run social insurance schemes—we have chosen to go down the path of compulsory private superannuation. If this was a publicly run scheme, a social insurance scheme, then one could justify applying activity tests and the like. However, we are talking here of access to people's private savings.

While government is entitled to restrict access to a degree on the grounds of the tax incentives that are provided, we would regard the application of those additional social security rules as too intrusive. To put it another way, if the government believes that it is too intrusive to use its tax leverage to regulate the investment activities of superannuation funds, then how can it justify using that leverage to regulate the job search activities of superannuation fund members? This raises an issue of principle in a compulsory private superannuation system.

Perhaps I could raise a minor point under that heading. From my reading of the new rules it is not clear that they extend to benefits such as Austudy. I have seen mention of Social Security and DVA, but not the Department of Employment, Education, Training

and Youth Affairs. That is a serious gap.

The second concern is that 12 months is too severe a test of hardship. There is no compelling evidence that those who have just applied for income support such as unemployment benefits, sole parent pension or disability pension are substantially better off than those who have been in receipt of benefits for some time. For example, many unemployed people often wait a considerable time before applying for income support payments in the hope that they will obtain a job, and because of the stigma of receiving unemployment benefits.

Most unemployed people come from relatively low-paid positions, or are entering the labour market for the first time or re-entering it, so it cannot be assumed that they have a stock of liquid assets available to them at that point in time. At the same time, if they were on wages or salary their incomes will drop very substantially at the point that they become unemployed. The single adult rate, for example, is \$160 per week. If they do have a stock of liquid assets, the social security rules require them to wait until they have used up a substantial part of those assets. If you have liquid assets of more than \$5,000 if you are single, or \$10,000 if you have dependents, you are not entitled to benefits until you have reduced your liquid assets.

Secondly, to give another example, many sole parents apply for the sole parent pension immediately after separation when they find themselves, in effect, without any source of income. They may not have been employed at the time of separation. They often find themselves, at least in advance of court proceedings, with very few resources and with children to care for. That is a financial crisis for many people, and assistance which is provided at that point of time can often avoid severe hardship later on.

In addition, the 12-month rule can give rise to a number of unintended anomalies and disincentives. For example, many people on unemployment benefits go off benefits for a short period because they might obtain a temporary full-time job. This is an activity that should be encouraged and not discouraged. People approaching the 12-month mark who have significant superannuation savings and are desperate for income, because of excessive debts or whatever, may be encouraged to remain on benefit for the extra period. If the early access does not apply to low-income working families with children who are in receipt of the higher rate of family payment, then there is an element of discrimination between low-income working families and people on social security benefits whose family income may be exactly the same.

I have a final comment on the compassionate grounds. As I understand them, they are extremely strict. That is understandable, but it would make sense to have some scope for discretion to cover circumstances that cannot be predicted in advance; otherwise relief on compassionate grounds does not make a great deal of sense, even though the test might still be severe.

CHAIR—Where should that discretion reside?

Mr Davidson—We would suggest that it should reside ultimately with the ISC rather than individual funds, because that can otherwise give rise to anomalies and inequities in the treatment of people in the same circumstances; but that the ISC might decide to contract that to, for example, the new Centrelink Agency or some other organisation with expertise in that area. The main proviso is that a consistent set of rules is applied in a consistent way.

Senator SHERRY—Concerning the philosophical approach to whether any access should be allowed to moneys which are clearly for retirement purposes, do you know of any country in the world where there is a level of compulsory contribution for retirement incomes, whether it is social security tax or compulsory superannuation, and we are almost unique in that regard, that effectively allows citizens to take money that is effectively for retirement to be used during their pre-retirement life? I cannot think of one. Isn't the logic of this approach the same as arguing a person should be able to take part of their age pension before they are retired because they are in some sort of hardship?

Mr Davidson—In a sense we do allow people access to income support before they retire on a range of grounds. We have unemployment benefits, sickness benefits and so on. Overseas countries which have compulsory retirement savings schemes also have compulsory savings schemes for other purposes, whether it be disability, unemployment and so on.

Senator SHERRY—Do they allow the money that is specifically allocated for retirement purposes, that is, the provision of an income, and in our case it is a lump sum, to be accessed prior to retirement?

Mr Davidson—Not to my knowledge, but my suggestion is that the comparison is not quite appropriate where we only have a compulsory savings system for retirement and not for other purposes. Those other countries would argue that we provide for those other circumstances by allowing you access to your compulsory savings under the other schemes or under the global scheme, as the case may be.

Senator SHERRY—Why do you not then advocate that the government have some sort of compulsory savings scheme for emergencies or hardship rather than allowing access to moneys that are for compulsory retirement purposes, particularly given what are considered to be levels of compulsory contributions which are, by international comparisons, on the low side?

Mr Davidson—Because the Australian system makes a great deal more sense than the social insurance schemes overseas, it makes more sense to combine a compulsory savings scheme which is not divided into half a dozen separate categories which in the end will not cover many circumstances, such as marital separation, with a social security

safety net rather than to operate a categorical social insurance scheme.

We are not arguing, as I indicated before, for general access to retirement savings on hardship grounds. We are in favour of a reasonably strict approach to early access. We would not argue, for example, that simply because people have income or assets below those levels that they should automatically obtain early release of their benefits.

CHAIR—That will be a natural outcome providing you do 12 months under certain government schemes.

Mr Davidson—That is a risk inherent in the way the scheme is designed because the 12 months appears quite severe, and is quite severe, but it makes it very difficult to justify a second tier of assessment to prevent that kind of leakage.

Senator SHERRY—I was going to ask this question of the department next week, but do you have any idea of the number of people who would satisfy that test as it is at the moment—that period of time on social security?

Mr Davidson—There are over 200,000 long-term unemployed people. Beyond that, I do not have the numbers.

Senator SHERRY—Once you have a standard test as the government is proposing, do we not run the risk that anyone who meets the test automatically must be given access to their superannuation money. It would seem logical to me that most people would view that as a right and an entitlement. You are unemployed for X period of time. I want some money; I might have Y amount in my superannuation; I will go and claim it.

Mr Davidson—I think that is absolutely right. We would regard the hardship rules as akin to the emergency relief system rather than an automatic entitlement type program. We would regard the use of social security income and asset tests as a first hurdle designed to introduce a degree of consistency into the scheme and to make it difficult for quite a significant number of people who, as I understand it, already obtain early release to do so. As I understood the figures when I last saw them, quite a substantial proportion of people who obtain early release would have income or assets above those levels.

Senator SHERRY—Do we not also run the risk that a small minority of persons who are unemployed for the period are not necessarily people you could regard as suffering hardship? What if a person is a gambler and unemployed by choice for a period of time and wants access to the money for purposes other than what we would traditionally regard as genuine hardship provisions? Shouldn't there be the possibility of some sort of a subjective assessment as well as a clearly defined social security time period? I am not suggesting that is easy to do because, as I understand from the evidence we have received, the ISC pretty much rubber stamps all the applications. They simply do not have the resources to assess tens of thousands of applicants. I see that as a severe

practical problem.

Mr Davidson—It is a severe practical problem and emergency relief agencies face that problem constantly. But I think it is worth experimenting with systems of assessment that go beyond a level of material hardship, or income or assets, or a particular duration on benefits. I think it would be fair to say, though, that the vast majority of people on income support benefits are likely to be experiencing financial difficulties because they are not likely to have come from more comfortable or higher-income backgrounds in the first place.

Senator SHERRY—You have touched on the issue of a relationship breakdown. I do not want to generalise but I think it is true in the considerable majority of cases that, in the case of a relationship breakdown and the settlement of assets, the Family Court does now take superannuation accruals into account when dividing those assets. As I understand it, the Family Court cannot break the superannuation fund up and allocate it proportionally. They can allocate a financial compensation in lieu of doing that and that creates problems in itself. But, in that sense, when the final award is made of financial determination, it does take into account superannuation assets.

Mr Davidson—As I understand it, that is true. The difficulty for the sole parents, as I mentioned earlier, is that a divorce settlement may of course be a number of years after the separation and there is a critical period of financial adjustment in the meantime which may make the difference between having a more or less secure roof over your children's head, or having to move from refuge to refuge, or whatever.

Senator ALLISON—In your experience, what is the difference between those on other sorts of benefits and those on Austudy?

Mr Davidson—The government is proposing to do away with the distinction entirely for young people and to establish a youth allowance. The basic justification for that—with which we agree in principle—is that it is becoming more difficult to distinguish clearly between young people who are unemployed, and young people who are students. Increasingly, young people are moving from full or part-time study to jobsearch, to a labour market program, and so on. So the distinction is becoming more arbitrary. I think it would have been true to say in the past that many Austudy recipients came from better off backgrounds than most unemployed young people. That is probably still true to some extent but it is less so now.

Senator ALLISON—Yes. I mean for the purposes of superannuation. I would not expect young people to be tapping into superannuation if they had not actually worked.

Mr Davidson—We are talking more about mature age students. Most adult students are either completing a tertiary course—they are in their 20s—or they are mature age students, such as married women, who are attempting to return to the work force once

their kids have reached primary school age.

CHAIR—That could include retrenched people who want to use the bit of money temporarily to try and do a university course to upgrade their qualifications to improve their lot. That is the problem we face.

Mr Davidson—I think that increasingly that is the case because those retrenched people who have limited qualifications, especially mature age people with limited qualifications, have very little chance of breaking back into the work force otherwise. But the thing to bear in mind with Austudy is that it has a personal income test which, while not as stringent as unemployment benefits, is still reasonably stringent. So the single adults, for example, who apply for it are generally not going to come from middle class or higher income circumstances.

Senator ALLISON—Yesterday we heard from a financial counsellor who told us that he often advised his clients that this was an option available to them—that is, accessing superannuation earlier—and that very often people did not understand that that was available to them. Is that also your experience or is there some sense now that it is fairly common knowledge that you can rely on early access to either maintain lifestyles or to solve immediate financial problems?

Mr Davidson—I think it is not generally known and people need advice to find that out, whether it is from financial counsellors, emergency relief agencies, the fund itself or whatever. There would be some instances in some industries where the information passes by word of mouth but I do not think you could say that was widespread.

Senator CONROY—Do you think there would be an increase in the number of hardship cases if a GST was introduced under Mr Howard's plan that was announced yesterday?

Mr Davidson—I think that is drawing a long bow and we will have to wait and see what emerges with the tax debate over the next 12 to 18 months.

CHAIR—Would you like to sum up for us?

Mr Davidson—In summary, we believe that there is a case for restricting early access on hardship grounds using social security income and asset tests and to apply more subjective tests as well. However, the requirement that people actually receive income support payments for a period of 12 months is excessively intrusive and too stringent for those who are in hardship but are not in receipt of benefits for that length of time.

CHAIR—Thank you.

[3.24 p.m.]

FORSDICK, Mr Michael James, Partner, Coopers & Lybrand, Coopers & Lybrand Tower, 580 George Street, Sydney, New South Wales 2000

MATHEWSON, Ms Pauline, Partner, Migration Services, Coopers & Lybrand, Coopers & Lybrand Tower, 580 George Street, Sydney, New South Wales 2000

CHAIR—Welcome. I understand Ms Mathewson that you have been a committee member of the Roach committee?

Ms Mathewson—That is right, yes.

CHAIR—We were wondering, in speaking to your presentation, whether you could give us some of the benefits of the recommendations that came from the Roach committee and also some reasoning behind it?

Ms Mathewson—I do not know how much you know about the Roach committee so I will just go back and explain why it was formed. It was formed by the government in October 1994 with the chairman, Neville Roach, who was the managing director of Fujitsu Australia, John Hall from the International Bankers and Securities Association, a director of John Holland and me. Between us we represented the major users of the temporary resident system of main temporary executives and specialists entering Australia. Those four big industries probably cover the big usage of the system. Also on that committee was Alan Mathieson representing the ACTU and the unions.

We were asked to review the policy and procedures of temporary residents at the time of temporary entry of business people into Australia. We made our recommendations to government which were approved by cabinet in August 1995. We basically looked back at the principles of what was driving the temporary resident policy for skilled entry—the policy principles that had been put into place in the 1970s. My interpretation, and I guess that of the other committee members, of those policy principles was that there was a mentality that Australia was an island, that if it needed people from overseas then the companies had substantially failed and not made any effort to train. The whole of temporary entry in the 1970s was based around this self-sufficiency of Australia.

We decided after much consultation, experience and, hopefully, wise deliberation that that was no longer appropriate for Australia. Australia had to be part of an international environment in which there was, as much as possible, a seamless movement of people into and out of Australia, that there were a lot of drivers and that, for a start, companies cannot anticipate 10 years hence what will be the technology requirements and what will be the skills requirements.

Underlying that, we said that we must protect Australian workers and offer

encouragement. But, at the same time, anything that brought forward the expansion of Australian business, which is inevitably assisting international business as well, moving into Australia and moving people in and out, was of benefit to the country. I guess that is what drove the whole of the policy and recommendations that we made to cabinet. All of the recommendations were approved except for two. They were both financial matters.

The first financial matter that we recommended was an exemption from the Medicare levy for temporary residents because they were no longer eligible for Medicare entitlements. There is some reciprocity between a couple of countries in the world such as the UK but it is limited. In 1995 the entitlements to Medicare were removed for temporary residents. The second matter we recommended was that the Superannuation Guarantee Act be changed. We recommended changing the wording from entitlement for exemption from the superannuation guarantee charge from a 413 visa, which it specifically states in the legislation, to 457 visa holders. It was considered by Treasury that that was a Treasury domain and it was not an immigration matter, so that would be referred back to them.

Since that time, I have been working with the Department of Immigration and Multicultural Affairs trying to get some changes to that superannuation guarantee legislation. Interestingly, when I met with Treasury in 1995 I was of the opinion that this was the least of their problems, that Medicare was vexing their mind a little more. The issue of Medicare has subsequently been resolved and there is a mechanism for temporary residents or people not entitled to Medicare to get an exemption from the levy or a refund of the levy. Once again, we as a committee were very committed to having the need to pay a superannuation guarantee charge or to be in a superannuation fund for temporary residents or for 457 visa holders removed.

My observation of my meeting with Treasury was that I think they fundamentally had some trouble understanding the difference between a 413 visa and a 414 visa holder. There used to be a series of visas, as you have heard a number of times here. A 413 visa referred to a person who was an executive and a senior executive who entered Australia to take on one of those two functions. A 414 visa holder was a person who entered Australia who had certain specialist skills such as a computer programmer. There are a couple of other very minor classes of visa that were also included.

One of the reasons we wanted to have one visa class was that it was simply confusing. There was a blurring of distinction between 413 and 414. I guess the best example is if you have, say, a geological engineer who is working in a mine and earning \$200,000 a year. I would deem that person who might be running the mine to be an executive but the chances are that an immigration officer might say that is a technical role, so he is a 414 visa holder. We said that is meaningless and it does not make any difference. There is no point in having this distinction. It just ties up people's time.

That brings me to the problem with this exemption and the proposal that is put forward that there will be an exemption for people who would have been 413 visa holders

had the legislation existed. Firstly, the legislation does not exist any more. The basis upon which a person now obtains a 457 visa is distinctly different from the basis that they obtained a 413 before. For a 413 or 414 visa the old system was based on a person's background and skills. The new system is based on the function and activity—the need for that person in Australia, the key activity role that the person will undertake in this country. It is somewhat like comparing apples to oranges. It is not relevant to say that if that person had come in, if the system had existed, they would have been a 413 visa holder because it is not relevant to their visa now.

I have some fundamental problems with understanding how such a proposal will work, using my example of the geological engineer. I run a migration practice. If we deem, in making an assessment and making a submission to government, that the person is what would have been a 413 visa holder, and the only way that that could be done is by using what is called the ASCO dictionary—that is a dictionary of all occupations that have a definition in Australia—then perhaps our definition will be different to the ultimate definition the decision maker may make, but it will never be apparent because the person is still going to get a 457 visa. So there are some problems with that.

Then the question is: are the super funds going to self-assess? If they do, thinking, say, that I as an adviser said, 'I would consider these people to be a 413 visa holder,' and if it subsequently transpires that somebody in, say, the department of immigration has said, 'We think they are a 414,' it is going to create anomalies and, in fact, an unworkable situation for the superannuation funds.

CHAIR—Thank you. That is very useful background. Would you like to talk to other aspects of your submission?

Mr Forsdick—Thank you, and thank you for inviting us along to talk to our submission. Certainly we can go through it in any detail you wish. I would just like to concentrate on the two major issues that we are raising. My colleague Pauline has already raised the issue of the visas. That has been thrown into even greater importance because of the changes that were announced in the budget on the releasing of benefits to people who depart permanently overseas.

We are finding now, because of the confusion over visas, that a lot of temporary entrants to this country are having to be covered for superannuation even if they are here for a very short period of time and are going to have to leave the country and leave what may be very small amounts or quite substantial amounts behind. That has implications for employment of such people. It also has implications for the superannuation industry. I am not sure if the committee is aware of this, but at 30 June 1997 the Australian Taxation Office had on record that there were 1.3 million lost member accounts notified to them. These are accounts held by superannuation funds in this country where the trustees, under the SIS legislation, have had to tell the tax office of these lost members. That is a pretty big number. I would regard that as a bit of an embarrassment and something that would

have to be dealt with now. These problems are only going to be made worse by forcing temporary visitors to this country to have to be superannuated.

The other main issue is the cashing out of benefits. The first issue is not so much of an issue if people, when they leave, could take their benefits with them. The main problem I have with the cashing out of benefits is the retrospectivity. I do understand the government's desire to stop the at least anecdotal evidence of people saying to the trustee that they are departing permanently overseas, and then funding a good trip overseas and coming back after spending their retirement money. That may well happen. But I believe that the collateral damage that this change has caused has very much affected the temporary visitors to this country. I would like to see an exemption from this restriction for all 457 visa holders and, at least to avoid the retrospectivity, all those who were in the country at 30 June 1997.

I have spoken to multinational clients who have operations in this country and who have people coming here on temporary visas. They are quite horrified by this change, not only the retrospective nature of it but also the very short time frame in which it was announced. Even the concession that was granted by government was only a four-day window which, I would suggest, is somewhat laughable. I would like to see that changed.

In our discussions on this, including discussions with the Assistant Treasurer, it became apparent that there was a concern that government had the ability to cash out benefits when leaving this country, and also an exemption from super in the first place for certain visa holders coming to this country, was jeopardising reciprocal social security agreements with overseas countries. Whilst I have not got to the bottom of that, that seems to be an issue that has been raised: that, if we take the United States for an example, an Australian working in the US has to pay social security taxes and is not entitled to a single cent of those taxes in the form of social security benefits unless they work there for 10 years or 40 quarters, so the Australian returns to this country, has suffered that and got no benefit from it; whereas if you were to equate the superannuation guarantee or top-ups in addition to that to the same equivalent, then an American could cash out the money when they leave this country.

In trying to do a deal with overseas countries on those social security arrangements, maybe we were in a weakened bargaining position. So perhaps there is a reason—and it is certainly a reason that we see being proffered—to say, 'Let's get tough with these overseas countries so we are in a better bargaining position.' I do not know the depth of the truth in that, but it certainly seems apparent.

We have suggested that, firstly, we deal with the retrospectivity and we say, 'Okay, fine, use that as an argument, but let's not penalise the people who are already here. Let's say that for people arriving in the future, okay, maybe it is tougher for them.' Secondly, why not be a little more sympathetic and, perhaps on a country-by-country basis, you could exempt people coming here from these new preservation rules if they come from a

country where an agreement has not yet been reached but there is a deadline by which that agreement has to be reached—say, two years—and, if that deadline is not met, then the preservation rules could apply. That way you could still get leverage with those overseas governments to come up with some agreement within a reasonable time frame. That is a suggestion that we put to the Assistant Treasurer for his consideration.

Those are the two main issues. If I could add one further point, we have attempted to get some statistics on how many people we are talking about for 457 visa holders, as opposed to 413 visa holders. As my colleague has stated, it is really a new system so we cannot compare like with like necessarily, but we are probably only talking about an extra 7,000 people a year who would be exempted from superannuation guarantee if the 457 visa holders were fully exempt, as opposed to just this somewhat unworkable 413 system.

CHAIR—Would there be any problem if they paid the SGC and got it back when they left?

Mr Forsdick—It would certainly be less of a problem than what is proposed at the moment. That is workable to some extent, but it is still not satisfactory.

CHAIR—From your experience on the Roach committee, can we extend this beyond the corporates that bring their people out to the entertainers or the sports people who come out?

Ms Mathewson—The exemption?

CHAIR—Yes; some of those seem to be caught up in a very similar position. Very few people have put their case.

Ms Mathewson—And that is surprising. Maybe the reason they have not is that they are here and then they are gone, but it is the silliest thing for an entertainer that comes here for two days. Mike, you would be more aware of that.

Mr Forsdick—Specifically in the SG legislation they are counted as employees—they are in there. Our firm does deal with a number of people who come here to fill the Sydney Entertainment Centre for a few days and then they go away again—and they have to be superannuated.

CHAIR—Under the new arrangements they will not be able to get that out.

Mr Forsdick—That is correct; for many years.

CHAIR—What sort of visa do they come into our country on now?

Ms Mathewson—It is an entertainer's visa. It has a special number, not 457. It is

outside this discussion but it would include entertainers and the sports people as well. But they generally stay very short periods of time.

CHAIR—Should we be doing anything for these people?

Mr Forsdick—I would have thought that anybody who is here for a short period—

CHAIR—What do you call a short period?

Mr Forsdick—At the moment, in the taxation act, there is actually a definition of somebody called an ‘exempt visitor’, and that has a number of taxation consequences, generally favourable, recognising that they are not long-term stayers in this country. It is under Section 517 of the Income Tax Assessment Act. An ‘exempt visitor’ is someone who comes here on a visa of less than four years and the visa cannot be renewed for a further extension of that time. It is four years and that is that. I think that would be a pretty good benchmark to work with.

CHAIR—To me, that would run into problems, say, with equity et cetera because some of these stage shows that come could run for two years. It could be argued that some of those people could be replacing Australian jobs. So how do you distinguish between the three tenors who come here for a couple of weeks and Tiger Woods who comes here to play golf as opposed to people who might be here for a longer period of time?

Mr Forsdick—I assume that is a visa issue.

Ms Mathewson—I think the issue is a little different because, in negotiating visas for these entertainers, there is an incredible union involved. In fact, the most difficult part is not getting the visa but the arrangement relating to how many Australians will work, as well. If you take another look at that, for every entertainer who comes to Australia, they probably have to create, say, 10 jobs for Australians. So the fact that the entertainer is here is absolutely creating more work than could possibly have happened if the entertainer were not here. There are very strong negotiated arrangements between the Actors Equity, or the appropriate musicians union, and the individual. Immigration does not issue the visa until that arrangement has been agreed to. There is actually a formal agreement between the two parties.

CHAIR—Do you suggest that, where that visa has been issued, given the stringent negotiations that have taken place, that superannuation should be refunded?

Ms Mathewson—Yes. It would be preferable if it was not levied in the first place. As part of the Roach committee, we asked: what is driving this country? Where does our country want to be in the 21st century? The message that we got, when talking to business, is that we have an overly complex system. We are unnecessarily complex and

we confuse other countries with our complexity, and our various levying of taxes, and this is another one.

The interesting observation is—and I think I said it before—most companies, or all companies, want to do the right thing. The one thing that drives them is the fear that they may do the wrong thing. So it is not a question of saying, ‘We are being funny about this.’ They really want to understand. I have certainly seen companies just simply walk away from Australia, saying it is too hard. I have seen that happen. They weigh it up and, unless there is a driver—

CHAIR—In what areas would they be walking away?

Ms Mathewson—They are in potential new development areas—such as in technologies—where they can perhaps obtain a base of people somewhere else, say, in Asia. Cost of living wise, Australia is a fairly good place to have people if you are going to set up, say, a regional headquarters in Australia. But the tax system is such a complex driver away from Australia.

There are a couple of other interesting things that are just observations. It is actually very difficult to get the statistics, because of timing differences, but not that many people change from temporary to permanent residence—maybe I would put it at 5 per cent as a maximum of those skilled people. If it was a question of people who were two years down the track, who have not been superannuated and who will become a tax burden, that would be a very insignificant number of people. Those people generally tend to be in a fairly senior executive class anyway, because they then have to go through a fairly stringent immigration process to get permanent resident visas through what is called the employer nomination scheme. So that is one thing.

The other thing that is almost impossible to get at this stage is the statistics because the 457 visa class has been in for only one year. Although visas are quite often issued for four years, people stay for a lot less than four years. The best examples are the major mining companies. I can think of a number of our clients that have set up in Australia because they have won a tender or a contract who are in here to get the job done and then they are out again.

We were involved with a fairly big train building corporation. They came in and brought 20 people with them. A year later they employed 200 people in South Australia—a very important thing—and they have two US expatriates here. That is typical—to bring people in, get the place set up and then remove their expatriates—mainly because, as we have said, it is expensive. There is a rule of thumb we use in our firm that it costs a corporation between 200 to 300 per cent of the cost of an Australian to have an expatriate in Australia.

Senator ALLISON—We have been struggling a bit with trying to understand what

it is that is behind the government's moves in much of this legislation. I am very interested in your remarks about Australia wanting to do a deal or at least having some leverage over the US. Can you expand on that a bit? Can you tell us, for instance, whether you think it would be an effective tool?

Mr Forsdick—I am afraid I cannot really because I have been having a bit of difficulty understanding it myself. I do, for example, know that between the US and the UK there is an arrangement by which—perhaps I should go back a step. In the US, as I mentioned, there are social security taxes. People see that and they pay that. In the UK there is a similar arrangement. It used to be called NHI when I lived there, but maybe it is something different now. There is an impost there which is to fund both medical benefits of the national health system and also social security benefits.

Senator ALLISON—Including retirement pensions?

Mr Forsdick—Correct, yes. They are not funded in the way a superannuation guarantee is funded here in this country. It comes out of general revenue in the same way the old age pension does here.

There is an agreement between the US and the UK for short-term visitors in that if a UK person goes to the US they are exempt from their social security taxes because they are ultimately going to be living and retiring in the UK. That is, I think, probably what the government would like to achieve for this country.

But this country at the moment does not have, separate from the ordinary tax rates, a social security tax. Perhaps we would not be having this discussion if in fact there was a social security tax. We have a medicare levy—and, as Pauline has already mentioned, that already has been dealt with by exemptions. We are really talking about much the same thing here as far as retirement benefits or social security payments. If we had a social security tax, maybe it would be a lot easier and we would not be having this worry about superannuation guarantee which is meant to be the second tier of retirement—the first tier being the old age pension.

I think what the government may be doing is using superannuation guarantee really as the equivalent of the social security tax and saying, 'Any visitors to this country have to pay it and they can't take it with them when they go.'

Senator SHERRY—Are you aware of any consultations with industry prior to this budget announcement—prior to it as distinct from since it was announced?

Mr Forsdick—Absolutely none at all. It came as a surprise to everybody that I have spoken to. It was tucked away in the budget and it took a few days before people really realised what this was going to mean, especially for expatriates.

Senator SHERRY—I assume your discussions with the Assistant Treasurer have been to no avail given that the regulations—and in the case of the SHAR legislation—have proceeded and the regulations at least will have force of law unless they are reversed by the Senate within 15 days of our next meeting?

Mr Forsdick—The Assistant Treasurer was very receptive to our comments. We split the comments into two: the exemption from superannuation guarantee and the cashing out of benefits. I got the impression that certainly, in respect to the former, this desire to be in a good bargaining position was fairly powerful and that there would not be much movement there. As far as the latter goes, I do not think we really got any feedback one way or the other, and we have not heard any response since that meeting.

Senator SHERRY—This bargaining issue that we have had put on the table since the announcement, are you aware who would conduct this bargaining with other countries? Would it be foreign affairs, social security, Treasury?

Mr Forsdick—I understand that it is social security.

Senator SHERRY—That is what I would have believed. I take it you had no meetings with social security on this matter?

Mr Forsdick—No, we have not.

Senator SHERRY—So why would Treasury be putting forward the issue rather than social security?

Mr Forsdick—That I do not know.

Senator SHERRY—Mrs Mathewson, did Treasury put a written submission to the Roach committee?

Mrs Mathewson—No, I am fairly sure they did not, but they were interested. I have the recommendations here, which has a list of submissions in the back. They were particularly interested at the end when they saw our recommendations about these two factors—Medicare and the super guarantee. Subsequently, I met with Treasury in Canberra—I do not know who they were—and I tried to help them understand the visas.

I got the distinct feeling—this is just a personal observation—that at that time they thought a 413 visa holder was about one of five or six people in Australia—a very senior executive. But, as I said before, it does encompass two lots of people. The quotation I got back—I can quote it because it was so memorable—was that ‘they had to consider the macroeconomic indicator shift effect of making such a decision’.

Senator SHERRY—And this is a good example of the dysfunctional consequences

of single performance criteria, which is another famous Treasury quote. We will speak to Treasury next week about all of this.

Senator ALLISON—What is likely to be the effect on the industry in terms of confusion and disruption if these regulations are disallowed over the next few weeks?

Mr Forsdick—Particularly in the area of tax—and I am afraid superannuation is only going to be seen more and more as a tax, as a cost of employment for such people—it is just, I suppose, another incremental hurdle for overseas businesses setting up their operations here.

Senator ALLISON—I will put it another way. Would you welcome the Senate disallowing those regulations?

Mr Forsdick—Yes, I would.

Senator ALLISON—Do you think that attitude would be reflected across the industry and would there be administrative problems with a disallowance?

Mr Forsdick—Across the industry, the disallowance of those regulations would be supported. I feel very comfortable with making that statement. Would it create administrative difficulties? No, I do not believe so. They would pale into insignificance compared to the administrative difficulties that it is going to create if they do go ahead.

Mrs Mathewson—One of the anomalies that will occur—once again back on this 413 visa holder—is that there will arise situations where corporations in Australia, say a US corporation, might have 20 people here and they might be in the situation where five will be exempt because they could have been deemed to be 413 visa holders and 15 will not be. That will cause huge friction within those expatriates from offshore.

CHAIR—Yes, that point has been made. Thank you for appearing before the committee this afternoon.

Committee adjourned at 3.56 p.m.