



COMMONWEALTH OF AUSTRALIA

SENATE

SELECT COMMITTEE ON SUPERANNUATION

Reference: Restrictions on early access to superannuation moneys

CANBERRA

Wednesday, 20 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

BLACKLOW, Mr Leslie Malcolm, Assistant Secretary, International Programs Branch, Department of Social Security, PO Box 7788, Canberra Mail Centre, Canberra, Australian Capital Territory 2610	142
BROOKBANKS, Mr Eric, Assistant Secretary, Business Branch, Department of Immigration and Multicultural Affairs, Benjamin Offices, Belconnen, Canberra, Australian Capital Territory	142
BROWN, Mr Roger, Assistant Commissioner, Supervision Branch, Insurance and Superannuation Commission, 243-251 Northbourne Avenue, Lyneham, Canberra, Australian Capital Territory	142
GERATHY, Mrs Deidre, Assistant Secretary, Superannuation Policy Branch, Department of the Treasury, Parkes Place, Parkes, Canberra, Australian Capital Territory 2600	142
GOODWIN, Mr Grant Kenneth, Director, Superannuation, Australian Taxation Office, 2 Constitution Avenue, Canberra, Australian Capital Territory 2601	142
HEFEREN, Mr Robert William, Senior Officer Grade B, Legislative Services, Australian Taxation Office, 2 Constitution Avenue, Civic, Canberra, Australian Capital Territory 2601	142
LARKIN, Mr John Terence, Assistant Commissioner (Policy), Insurance and Superannuation Commission, 243-251 Northbourne Avenue, Lyneham, Canberra, Australian Capital Territory	143
MCDONALD, Mr Tony, Acting Director, Superannuation Section, Superannuation Policy Branch, Financial Institutions Division, Department of the Treasury, Parkes Place, Parkes, Canberra, Australian Capital Territory 2600	142
MEREDITH, Mr Steve, Director, Skilled Entry, Department of Immigration and Multicultural Affairs, Benjamin Offices, Belconnen, Canberra, Australian Capital Territory	142
OLESON, Mr Neil, Assistant Commissioner, Australian Taxation Office, 2 Constitution Avenue, Civic, Canberra, Australian Capital Territory 2601	142
POWER, Ms Bernadette, Director, Policy, Services and Treaties, International Programs Branch, Department of Social Security, PO Box 7788, Canberra Mail Centre, Canberra, Australian Capital Territory 2610 . . .	142

**ROJAHN, Mr Eric John, Director, Financial Markets Policy, Retirement
Programs Branch, Department of Social Security, Tuggeranong Office
Park, Greenway, Canberra, Australian Capital Territory 2610 142**

SENATE SELECT COMMITTEE ON SUPERANNUATION

Restrictions on early access to superannuation moneys

CANBERRA

Wednesday, 20 August 1997

Present

Senator Watson (Chair)

Senator Chris Evans

Senator McGauran

Senator Ferguson

Senator Sherry

The committee met at 9.07 a.m.

Senator Watson took the chair.

GERATHY, Mrs Deidre, Assistant Secretary, Superannuation Policy Branch, Department of the Treasury, Parkes Place, Parkes, Canberra, Australian Capital Territory 2600

McDONALD, Mr Tony, Acting Director, Superannuation Section, Superannuation Policy Branch, Financial Institutions Division, Department of the Treasury, Parkes Place, Parkes, Canberra, Australian Capital Territory 2600

BLACKLOW, Mr Leslie Malcolm, Assistant Secretary, International Programs Branch, Department of Social Security, PO Box 7788, Canberra Mail Centre, Canberra, Australian Capital Territory 2610

POWER, Ms Bernadette, Director, Policy, Services and Treaties, International Programs Branch, Department of Social Security, PO Box 7788, Canberra Mail Centre, Canberra, Australian Capital Territory 2610

ROJAHN, Mr Eric John, Director, Financial Markets Policy, Retirement Programs Branch, Department of Social Security, Tuggeranong Office Park, Greenway, Canberra, Australian Capital Territory 2610

BROOKBANKS, Mr Eric, Assistant Secretary, Business Branch, Department of Immigration and Multicultural Affairs, Benjamin Offices, Belconnen, Canberra, Australian Capital Territory

MEREDITH, Mr Steve, Director, Skilled Entry, Department of Immigration and Multicultural Affairs, Benjamin Offices, Belconnen, Canberra, Australian Capital Territory

GOODWIN, Mr Grant Kenneth, Director, Superannuation, Australian Taxation Office, 2 Constitution Avenue, Canberra, Australian Capital Territory 2601

HEFEREN, Mr Robert William, Senior Officer Grade B, Legislative Services, Australian Taxation Office, 2 Constitution Avenue, Civic, Canberra, Australian Capital Territory 2601

OLESON, Mr Neil, Assistant Commissioner, Australian Taxation Office, 2 Constitution Avenue, Civic, Canberra, Australian Capital Territory 2601

BROWN, Mr Roger, Assistant Commissioner, Supervision Branch, Insurance and Superannuation Commission, 243-251 Northbourne Avenue, Lyneham, Canberra, Australian Capital Territory

LARKIN, Mr John Terence, Assistant Commissioner (Policy), Insurance and Superannuation Commission, 243-251 Northbourne Avenue, Lyneham, Canberra,

Australian Capital Territory

CHAIR—I welcome everybody to this public hearing of the Senate Select Committee on Superannuation. This is the third public hearing on the committee's inquiry into restrictions on the early release of superannuation moneys.

On the recommendation of the Selection of Bills Committee, the Senate, on 19 June 1997, referred the Small Superannuation Accounts Amendment Bill to the committee for inquiry and report by 28 August 1997. The provisions of this bill tighten the arrangements relating to the early release of moneys held in the superannuation holding accounts reserve, 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 full public hearings on the implications of the bill's provisions, particularly their impact on low and middle income earners.

Before we commence taking evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee and evidence which is given before it. Parliamentary privilege, for those who have not appeared before a committee before—and I do not think there are any—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 and without fear of prosecution. Any act by any person which operates to the disadvantage of a witness on account of evidence given by him or her before a Senate committee or any other committee of the Senate is treated as a breach of privilege. Accordingly, you are protected.

It is now my privilege to welcome you all to this inquiry, our third public hearing. We thought it may expedite matters and allow for a better interchange between people if we had everybody together, but we will start off by questioning witnesses from the Department of Immigration and Multicultural Affairs. At this stage, would anybody like to make an opening comment?

Mrs Gerathy—I would just like to make a brief introduction and provide a broad indication of some of the factors which form the basis of the measures that the committee is considering. When considering the circumstances in which superannuation money should be released early, it is important to consider the rationale underlying our superannuation system, which is supported by generous tax concessions. As noted in the Treasurer's budget statement on savings, choice and incentive, the government is committed to a retirement income policy that provides encouragement for individuals to achieve a higher standard of living in retirement than would be possible from the age pension alone. It also ensures that all Australians have security and dignity in retirement.

The Treasurer also indicated that the government would improve the operation of the preservation rules and the arrangements for access to superannuation benefits prior to retirement in order to reduce the leakage of funds from the superannuation system. He noted that these changes would result in increases in national savings, a higher level of income in retirement and, consequently, reduced pension outlays. The changes were also designed to improve the administration of the system as well as addressing some abuses of the previous arrangements.

Given that the basic rationale of the superannuation system is to improve retirement incomes, the starting point for considering these measures would seem to be that benefits should only be released early in limited circumstances. It is also important to have a set of rules which are as simple as possible, efficient, transparent and effective. It is almost inevitable in these circumstances that a line will need to be drawn. Obviously there will be some debate about where this line should be drawn, as indicated in the hearings conducted by this committee last week. All of us here hope that we will be able to assist the committee further today.

CHAIR—Thank you very much. Do any of the officers from the department of immigration have an opening statement that you would like to make?

Mr Brookbanks—No.

Senator SHERRY—I have a couple of issues following on from your opening statement. I think it has been argued that the thrust is to close leakages from the superannuation system. There are a number of other announcements in the budget paper, one of which is the increase in the preservation age from 55 to 60. Do you see that as consistent with the theme which you have just outlined?

Mrs Gerathy—Yes.

Senator SHERRY—If that is the case, what do you see as the rationale for requiring the deeming of superannuation at the age of 55?

Mrs Gerathy—Through the social security provisions?

Senator SHERRY—If the thrust is to ensure preservation of moneys to the age of 60 and that we close off various leakages in the system, why should people be encouraged to use their superannuation at the age of 55?

Mrs Gerathy—I might hand over to Social Security in a second. But I would just like to note that the increase in the preservation age from 55 to 60 does not actually start, I think, until 2015.

Senator SHERRY—For people born after 1964.

Mrs Gerathy—Yes. So there are a number of years before that. I am not sure if Social Security can help out.

Mr Rojahn—I think this matter has been canvassed at a previous hearing of this committee. The general arguments for that measure are that there are inequities that exist under the means test whereby customers who hold certain types of superannuation assets receive a more favourable means test treatment than customers holding other types of assets. That is one of the key arguments underpinning the measure.

Senator SHERRY—But the thrust of the measures we are dealing with here is that if we accept the principle that we should not allow leakage from the system—and there are three provisions here that it is proposed to restrict in a much tougher way—why should that principle be reversed in the case of effectively requiring people to draw on some or all of their superannuation at the age of 55 when we are trying to encourage people to keep their money until the age of 60 in every facet?

Mr Rojahn—Under the current conditions of release for superannuation, people who have retired after the age of 55 can access superannuation.

Senator SHERRY—Why should that be allowed?

Mr Rojahn—I am not sure whether I can—

CHAIR—Senator Sherry, this was a topic of an earlier inquiry. If it leads to another question I would be very happy. But I would not like us to have a whole debate on this issue which has already been legislated for.

Senator SHERRY—I do not intend to spend a lot of time on this. The rationale is preservation of money, to close off the various options for accessing money early in a variety of ways: transfer overseas and small amounts under \$500. If we are being consistent, why should we allow access to superannuation moneys in various circumstances at age 55 to 60?

Mrs Gerathy—At the moment that is the age. The preservation age is 55. It is proposed that it be increased to 60, but that will not take effect for quite a few years. It is the same with some of the financial hardship provisions: the rules are based on age 55 at the moment.

Senator SHERRY—Are you suggesting that in the transition period, moving from 55 to 60, at the same time persons who are affected by social security provisions at the age of 55 should not be allowed to access that superannuation?

Mrs Gerathy—If you are talking about the situation at the moment, the situation is that people who retire on or after the age of 55 can access their superannuation. I think that is consistent with the social security changes. As I said, the increase to age 60 will not take effect for quite some time. So I think it is consistent at the moment.

Senator SHERRY—If we are concerned about certainty and if we are following this consistency of closing off leakage and access, et cetera, would it not be appropriate over the phase-in period from, say, 1964, that a person from that date should not be allowed to access their money in any circumstances at all?

Mrs Gerathy—I think that might be a different question. If you follow the logic that superannuation moneys should never be accessed early, that would be one way of dealing with it. But we have a situation where people are able to access moneys at the moment before preservation age in various circumstances. One of the other announcements that the government made in the budget was the tightening up of the release of superannuation moneys, which is to take effect from 1 July 1999. I think it is a situation of moving from where we are now to a situation that people might consider to be a more preferable system of ensuring that superannuation moneys are preserved to the greatest extent possible. That is not where we are now, and I think it might be a bit of a shock to go from where we are now to what you are suggesting tomorrow, for example.

Senator SHERRY—What I am trying to deal with is the theme of the approach—I do not necessarily disagree with the theme; I might disagree about some of the detail we are discussing today—to close off various points of access to superannuation. If people are supposed to be encouraged to keep their superannuation to the age of 60, we have an inconsistency in that at the age of 55 they are now effectively required to draw on part or all of that superannuation, starting from September this year. Do you think that is an inconsistent approach?

Mr Rojahn—May I just comment on that? I think that as the preservation age rises, so does the age at which the social security means test treatment will cut in. There is a transitional arrangement there as well.

Senator SHERRY—Just following from that point, are you saying then that, as the preservation age increases and as social security deeming provisions continue in effect at 55, people would not be allowed to access part or all of their superannuation?

Mr Rojahn—I am saying the age at which the deeming provisions will be commenced to apply from would also increase in line with changes in the preservation age.

Senator SHERRY—That is new information to me. Where is that contained in the government announcement?

CHAIR—I think it is to be interpreted in the context of the way you phrased your question. Over time, given these upward movements, one would expect that.

Senator SHERRY—Let the witness answer the question. I am not badgering him. I am being fairly precise. Can you point to a government announcement that says that as the preservation age increases people will not be permitted to access all or part of their superannuation beyond the age of 55?

Mr Rojahn—No. I do not think there is. I am not aware of such an announcement. What I was saying was something different. I understand that the age at which the means testing arrangements begin to commence will also increase in line with the increase in the preservation age.

Mrs Gerathy—I just might add that that is the consequence of increasing the preservation age. The preservation age increases from 55 to 60. If we take the case of somebody born after 30 June 1964, it means that they will not be able to access their superannuation until the age of 60—unless they meet one of the earlier release triggers.

Senator SHERRY—That is interesting. I had not heard of that view until you had expanded it this morning. A person's superannuation—amounts of more than \$30,000—is deemed at the age of 55. If the social security is reduced according to the new deeming provisions, they would not be able to access their superannuation as the preservation age is phased out. Is that effectively what you are saying?

Mrs Gerathy—There are two separate issues here. One issue is the increase in the preservation age which was announced in the budget and previously as well. As that age increases, people will not be able to access their superannuation. The social security question is a separate question: that is, when they will be subject to the deeming.

Senator CHRIS EVANS—You are saying that there is no change in the deeming laws in terms of social security, but that the consequential effect, the inability to access their superannuation, will automatically impact on the deeming in the sense that they will not be able to access it under law?

Mr Rojahn—That is correct. The age at which the means testing of the superannuation assets cuts in will increase in line with the increases in the preservation age.

Senator SHERRY—You might double check the theme of restricting access. I do not want to spend a lot of time on it.

Senator FERGUSON—I have one question about leakages from the system.

CHAIR—It is outside our terms of reference.

Senator FERGUSON—I understand that. We were talking about leakages from the system, which is what Senator Sherry referred to earlier. He also spoke about the forcing of access to superannuation after age 55 for social security purposes. Is it not a fact that amongst the current population of 55 and over there are many whose provision for retirement is outside the existing superannuation arrangements or superannuation schemes? In fact, if they are over age 55 and do not have superannuation but have made other provisions for retirement, in the event that they are not working they are required to access their assets. This is an equity measure. People over the age of 55 who do have superannuation arrangements are being asked to access their assets in exactly the same way as people outside the superannuation scheme.

Mr Rojahn—That is correct.

Senator SHERRY—Following on from your introductory comments, you referred to the increase in national saving. What will be the specific increases in national saving as a consequence of the measures we are dealing with before this committee?

Mrs Gerathy—I do not think I can answer that question off the top of my head.

Senator SHERRY—As I understand it, is it not correct that the increase in private savings is as a result of the superannuation guarantee phase-in and not as a result of these particular measures?

Mrs Gerathy—I do not know the figures. Obviously, intuitively, these measures will increase national savings. There will be a reduction of leakage of moneys from the superannuation system, so there will be more money in the form of superannuation assets than there would otherwise be. As a consequence of that, there should be an increase in national savings.

Senator SHERRY—Why can't you provide us with the details to back up that assertion?

Mrs Gerathy—I just cannot answer your question at the moment.

Senator SHERRY—Could you take it on notice and provide us with the detail of what the consequences for national saving are of the measures we are dealing with today.

Mrs Gerathy—We may not be able to separate it out. I am sure there is a statement in here about what all the measures would be.

Senator SHERRY—There is a statement. It does not give detail; it just refers generally to an increase in national saving. It gives a figure, but certainly, in my view, that is a consequence of the SG. The savings that would amount from these measures would be infinitesimal. We have to make a judgment about the arguments for increasing national

saving and restrictions to leakages from the system and balance that off against, for example, allowing access to amounts of less than \$500—which is infinitesimal, a very small amount of money. We need to make a judgment about other issues relating to that, such as the administrative costs of those accounts existing in the system. It may be that if you have an infinitesimal increase in national saving—which I suspect you have—from amounts kept under \$500, the administrative cost of keeping that in the system may well be one of the factors that would lead me to conclude that it is just not worth it.

Mrs Gerathy—As I said at the beginning, there are a number of factors behind these particular measures. A consequence of this would be an increase in national savings and other things as well. As I also said, one of the other things is to try to have rules that are as simple as possible and efficient and effective as well. I was talking about the statement on page 9 and page 10: with the current arrangements, it is estimated that there would be a positive impact on national savings of 1.5 per cent of GDP in 2001 to 2002, rising to 3.6 per cent of GDP in 2019 and 2020.

Senator SHERRY—That is because of the effects of the SG.

Mrs Gerathy—The effects of the SG are included in that. I would agree that in the scheme of things it would only be a small increase from these measures. I would not necessarily say that that was the main factor; it was just one of the factors.

Senator SHERRY—My request to you is: prove it and detail it.

Mrs Gerathy—We will take that on notice. I am not sure what we will be able to provide you with.

Senator SHERRY—You have a budget document there that details a total figure and says these factors will increase national savings. To come to that total figure, the Rim task force in its modelling must have put in the various factors that lead you to come to that conclusion, that final figure. It must include within the formula of calculation the three measures we are dealing with today. So my request to you is to prove the assertion and detail the figures.

Mrs Gerathy—We will take that on notice.

Senator SHERRY—That would be very useful to us in judging the other factors on balance and balancing out whether some of these measures are worth while in the context of leakages from the system.

CHAIR—Are there questions on leakage, the small amounts of \$500, the hardship or the compassionate areas? I might come back to them. If I could just ask a couple of questions of the Department of Immigration and Multicultural Affairs. Could you comment on the benefits to companies from international staff transfers and how such

benefits relate to the broad economy. Would you also like to comment on the issues that have been raised by the earlier witnesses who have brought staff to Australia.

Mr Brookbanks—For the second part, I would appreciate it if you could highlight which aspects of the evidence given by the companies. The first part of the question was what are the benefits to companies of bringing in overseas skills. The arguments that companies have given to us is that access to overseas skills brings in technology, access to overseas markets through contacts and know-how that enable Australian firms to be competitive internationally. More particularly, it also enables a number of Australian firms, especially in trade and services areas, to have access to contracts in a number of countries. For example, accounting firms and legal firms would find it difficult to do business in, say, Asian countries without the presence in their firms of people with accounting and legal qualifications from those countries.

CHAIR—Can you give the committee a description of precisely what classes of visitors are covered by categories 456 and 457 visas which are used by temporary business entrants?

Mr Brookbanks—The 456 visa is available for short stay entry for periods of up to three months. It can either be a single entry for three months or multiple entry for either five years or life of the passport, whichever is longer. Essentially this enables people to come here—not to have work rights, but to conduct business for their company, such as negotiations, attending conferences and so on. Approximately 300,000 visas are issued each year under the 456 visa, and the average length of stay is of the order of 10 days or less.

The 457 visa is for longer stay entry—usually more than three months and up to four years. The four years can be extended on application. At this stage, roughly 25,000 visas are issued under the 457 each year. Within the 457, the majority of those people would be sponsored by Australian companies, but it is possible for overseas companies to sponsor temporary entry. It is also possible for people who are independent executives—in other words, running their own businesses—to enter under that class.

There are two minor parts of that class which relate to service sellers, which is fulfilling a commitment to the GATTs, and a minor classification that accommodates people from Taiwan and Hong Kong.

Senator FERGUSON—What countries does Australia not require someone coming into this country to have a visa at all?

Mr Brookbanks—New Zealand.

Senator FERGUSON—So, in effect, if somebody came in from New Zealand you

would have no knowledge of what they were doing here or how long they were here anyway; 456 and 457 apply would not apply.

Mr Brookbanks—They would not be applying for a visa. Our knowledge of what those people were doing would only be contained in their declaration on the passenger card on arrival. That is New Zealand citizens.

Senator FERGUSON—I understand that.

CHAIR—Most witnesses have queried the government statement about giving rise to labour market distortions, given the sorts of people they bring in. The government has said that, if there was an exemption for superannuation guarantee requirements in respect of all holders of the category 457 visa, this would be likely to give rise to labour market distortions. Do you have any information on such distortions?

Mr Brookbanks—The advice we have from businesses which use these visas is that for an Australian company to bring in an overseas skilled worker would cost between 2½ times to four times that of an Australian worker because of travel costs, housing costs, education costs, medical costs and so on. This has been a consistent figure given to us by a wide range of companies.

CHAIR—That is consistent with the figures given to us.

Mr Brookbanks—Certainly. From monitoring the intake in terms of the industries that use temporary entry from overseas and the occupations coming in, it is fairly clear that the usage is at the top end of the labour market—that is, executives and highly skilled workers—usually in areas where there is an acknowledged shortage of Australian skills available.

Senator CHRIS EVANS—Can you provide us with information that details the breakdown of people using those visas? You have said that it is asserted always that it is at the high end. I do not doubt you for a minute, but I would appreciate some breakdown of those visa entries: what categories they come in and whether they are professionals or executives, et cetera. Do you have that sort of information?

Mr Brookbanks—We have information for the 457 class showing which industries use it and which occupations come in.

Senator CHRIS EVANS—That would be great. This figure shows that it is four times more expensive. Is there any evidence to support that claim? I tend to get a bit nervous about commonly held assertions made again and again at committee hearings—like the double dipping argument in superannuation. It becomes part of folklore, but no-one actually ever fronts up with anything to prove the case.

CHAIR—We were given evidence of dollar amounts as well as the sorts of figures.

Senator CHRIS EVANS—On what aspect?

CHAIR—We had a labour market transfer consultant who provided some figures.

Mr Brookbanks—This information is not required by our department as a requirement for visa applications, so we do not hold that information.

Senator CHRIS EVANS—This is an assertion by a company. It is 4½ times more expensive to bring somebody in. Do we not have any professionals and executives in Australia to do the job? As a lay person, my immediate reaction is to question the logic of that proposition. If it is in a highly skilled specialist area that would be all right. But you are talking about 25,000 a year in the 457 class alone, which is quite a lot of specialists.

Mr Brookbanks—I could give an example. Following the deregulation of the financial sector after the Campbell inquiry in the mid-1980s, we had an agreement—it was previously with the Merchant Banks Association and it is now with IBSA, the International Banking and Securities Association—to bring in overseas skills. With the entry of foreign banks and the expansion of that sector, there was a shortage of Australians with particular skills in various aspects of foreign exchange dealing and so on. In those 10 years, approximately 200 permanent entry people have come in and something like 2,000 temporary entry skilled workers have come and gone. During that period, something like 10,000 additional jobs have been created for Australian workers. That sector just did not have the foreign exchange, the IT specialists and so on to do that work with the expansion of the sector following deregulation.

Senator CHRIS EVANS—I do not want to prolong the argument. I just suspect that Australia is not quite as good as other countries at ensuring that the development of skills in its own country are developed quickly and that companies are required to meet local employment targets in quite the same way as other countries. That is a different policy issue. I just want to question some of the assumptions.

Mr Brookbanks—One fact that is not always acknowledged is that from our own research we are aware that in the order of 200,000 Australians are working overseas on a temporary basis. At any given time in Australia the figure is roughly about 20,000 to 25,000 foreign temporary entry workers here. A number of Australian companies, such as BHP or the ANZ Bank, would say that they have roughly five Australians working overseas for every one overseas worker in Australia. There is a two-way flow here. There are many highly skilled Australian workers working overseas.

Senator SHERRY—Just on that two-way flow and on those figures: is that strictly comparable? Are you saying that 200,000 Australians in toto are in the same categories

that we are dealing with here?

Mr Brookbanks—Yes.

Senator SHERRY—200,000?

Mr Brookbanks—Yes. That is a conservative estimate.

Senator CHRIS EVANS—Are you talking about temporary work?

Mr Brookbanks—These are Australian citizens, permanent residents, who are living and working overseas.

Senator SHERRY—Is it just in the highly skilled categories or is it all Australians—younger people who are travelling overseas who are nurses, teachers or whatever—who are working temporarily in London, for example, which a lot do? Is that included within that 200,000?

Mr Brookbanks—It would include everyone.

Senator SHERRY—That is what I wanted to know.

Mr Brookbanks—Typically in Asia, Australian workers in places like Korea and Japan would be at the skilled end.

Senator SHERRY—With these visa classifications, are workers who come here on short holidays who are employed included in this category?

Mr Brookbanks—No. This 457 category is purely the business category.

Senator SHERRY—That is why I was arguing about comparing the numbers in this group to the 200,000 figure you gave us.

Senator CHRIS EVANS—Have you got the figures for the New Zealand-Australia exchange?

Mr Brookbanks—No. I would have to take that on notice.

Senator CHRIS EVANS—Obviously that is the non-visa class. I was just interested in that. There was some evidence raised about it.

Mr Brookbanks—Over the years, sometimes it has been a net inflow to Australia; sometimes it is a net outflow—according to relativities between the two labour markets.

Senator CHRIS EVANS—For many years I have been the only Australian in my

rugby side, so I am aware of the issue. Could we discuss this question of the 413 exemption. I was very interested in the logic behind that. Could you take us through the logic about the 413 exemption.

Mrs Gerathy—The logic is that they are highly skilled specialists who are here for short periods only and are most likely to have superannuation arrangements in their home country. It is a continuation of an existing exemption that was in place before 1 August 1996, when the 413 visa was folded into the 457 visa class.

Senator CHRIS EVANS—How is the immigration department going to assess this? How are they going to know who is a person who would otherwise have been a 413 entrant?

CHAIR—Over time this will become more and more obscured as current people who have knowledge of the 413 move on and new people come in. It does seem a fairly clumsy way of implementing an arrangement.

Mrs Gerathy—I might leave that up to Immigration. I understood that it is not all that difficult for employers to know who would have fallen within that category.

CHAIR—Relating it to a 413, which has now been wiped out, could those sorts of conditions—

Senator CHRIS EVANS—Is it a self-assessment process?

Mrs Gerathy—Yes, it is.

Mr Brookbanks—It is not a requirement for our visa applications that the companies distinguish. There is nothing in the immigration regulations that now requires a company to distinguish.

CHAIR—There is a real difficulty and there will be increasing difficulty for companies to really understand the basis and the logic of a 413 over time, because the 413 has now been wiped out.

Senator CHRIS EVANS—The real point is how you are going to assess and administer this.

Mrs Gerathy—It will be up to an employer to decide whether they are required to make superannuation contributions in respect of such persons. My understanding was that it would not be difficult to do so.

Senator CHRIS EVANS—What monitoring and compliance procedures are you putting in place?

Mrs Gerathy—The tax office is responsible for the administration of the superannuation guarantee system. There are a number of requirements in that system as well as throughout the tax system. It is a self-assessment regime at the moment. If a particular employer had any particular difficulties with it, then they could seek the assistance of both the tax office and the department of immigration.

Senator CHRIS EVANS—When you are doing your tax, do you not normally refer to the tax act? What do they refer to now, an old regulation?

Mrs Gerathy—They will be referring to the Superannuation Guarantee Administration Act.

Mr Heferen—I would expect the guidelines for a 413 visa to be laid down in the legislation. It would be up to an employer to assess whether the employee would meet those guidelines.

CHAIR—Are you expecting it to be in legislation?

Mr Heferen—No, but the guidelines to establish whether they would have met the 413 visa would be laid down. It would not be whether the person met a 413 visa, but whatever it was that you needed to meet would be laid down.

Senator CHRIS EVANS—Are you going to have to write down the criteria of the old 413 visa into the legislation?

Mr Heferen—I would expect that is a method by which that could be given effect. It is too early to say whether that would be the way it would go.

CHAIR—That would be your recommendation? We would be happy with that if that were the approach.

Mr Heferen—Presumably there is a way a person could establish that they would be entitled to a 413 visa; that is what they would have established through the department of immigration. Whether their work was to be limited to a particular period, in a particular profession, are the sorts of things that would be laid down.

Senator CHRIS EVANS—If I came to the immigration department as a United Kingdom resident and said, ‘I want a 413 visa. I think I am entitled to one,’ would you just give me one in the immigration department?

CHAIR—No, you would not get one. You would get a 457.

Senator CHRIS EVANS—If two years ago I came to the immigration department and said, ‘I think I am entitled to a 413 visa,’ would you give me one?

Mr Brookbanks—The legislation is all about entitlements and restrictions. If you meet our requirements, you would get that visa.

Senator CHRIS EVANS—You would check me, wouldn't you?

Mr Brookbanks—I would check.

Senator CHRIS EVANS—You would not take my assertion that I was entitled to it?

Mr Brookbanks—Absolutely not, no.

Mr Heferen—In the superannuation guarantee context, it is up to the employer to determine whether they have to pay superannuation guarantee for their employees. There is a range of exemptions—for example, their monthly income has to be above a certain level. One of the exemptions was that they were in Australia on a 413 visa. As Immigration pointed out, to get that 413 visa they would have to satisfy certain things. This is a supposition of the way the legislation might work—

CHAIR—I think that might be a dangerous supposition.

Mr Heferen—It would seem to me to be a realistic thing to say that, if that were the way we were going to go, then the criteria for which a person would have got a 413 visa would be the criteria for the exemption to the SG. It would be up to the employer to decide whether that employee is exempt.

CHAIR—Are there any further questions on the 413? In the previous hearing we had a witness who was a member of the Roach committee. We understand that the visa categories 457 and 456 were created in response to the Roach committee report. That committee had recommended that, with the creation of this new category for all business temporary entrants, employers should be exempt from the superannuation guarantee requirements for all holders of that visa. Can you explain why that recommendation was not adopted? What were the reasons behind it that led to the rejection of the Roach committee inquiry?

Mr Brookbanks—The Roach committee reported to the Minister for Immigration and Ethnic Affairs, as he then was. He examined all recommendations that were within his portfolio legislation. The superannuation guarantee charge and one other recommendation that related to the Medicare levy were in the Treasurer's legislative responsibilities and those matters were referred to the Treasurer.

Mrs Gerathy—The Assistant Treasurer put out a press release on 25 June about this issue referring to the Roach committee, indicating that the government had decided to 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.

The Assistant Treasurer said in the press release that the reason for not extending it to the larger number of class 457 visa holders was that it would give rise to labour market distortions by making non-residents cheaper to employ than similarly skilled Australians. He also indicated that there were concerns about Australia's ability to enter into bilateral social security agreements to obtain similar exemptions for Australians working overseas. There were basically two main reasons: the labour market distortions and assisting Australia's negotiating position in relation to social security agreements.

CHAIR—The witnesses have challenged both these assertions and that is why we are trying to find out where and how those labour market distortions occurred. We are having difficulty getting that evidence.

Mrs Gerathy—One thing that I have just confirmed with the department of immigration is that the 457 visa class also covers the spouses and dependants of the skilled people. If those spouses and dependants come here, have a job in Australia, it is possible that if they were exempt from SG that would create labour market distortions, obviously depending on what work they took. As I said at the beginning, there needs to be a line as to who should be subject to superannuation guarantee and who should not be subject to superannuation guarantee. The previous exemption with the 413 visa was continued in the Assistant Treasurer's press release, but there are concerns about making it any wider than that.

Senator SHERRY—That is an important issue that you have raised, and I did not realise that. Can the spouses of the people that come in on the various visa classes, including the former 413, work in Australia?

Mr Brookbanks—Yes.

Senator SHERRY—Do have any figures about the number that work in Australia? I would have thought that it would be substantial.

Mr Brookbanks—No, we do not have figures on that.

Senator SHERRY—Could you see if you can get some figures for us. If they are exempt—I hate to generalise, but I suspect that a significant number of them would not be in the same skill and work category as their partner—it would seem to me that there is potential for a warping of the labour market. See what figures you can get.

Mr Brookbanks—Those figures would not be available from Immigration sources. We would probably have to check with the department of employment and the Department of Social Security for that. It would be quite difficult to get those figures, other than maybe in an indicative way.

Senator CHRIS EVANS—Would you be able to provide the figures of the number of people applying in the past who bring their spouse in with them?

Mr Brookbanks—We could certainly give you information about how many people bring in spouses and dependants. For the 457, roughly 60 per cent of the visas are to the principal applicant, the worker, and roughly 40 per cent are for dependants, and that would be spouses and children.

Senator CHRIS EVANS—That is of the 25,000?

Mr Brookbanks—Yes.

Senator CHRIS EVANS—So only 60 per cent of those are the primary worker.

Mr Brookbanks—Yes.

Senator SHERRY—On the issue of dependants, just so I am clear on this—it is a relatively small issue—when they bring in a child or children, obviously some would be under the age of 18. There is nothing to stop those children working here?

Mr Brookbanks—Dependent children have work rights as well.

Senator SHERRY—When do they cease to be dependent? Is there an official cut-off age?

Mr Brookbanks—Broadly, it is 21. There are discretions about financial and emotional—

Senator SHERRY—If they have brought in their child, and the child was at high school or going on to university, is that child permitted to work part time at McDonald's, for example?

Mr Brookbanks—That is permitted.

CHAIR—Can you outline other categories of visas that might be of interest to the committee in this inquiry—for example, those relating to entertainers, sportspersons and other visitors to Australia. I understand that, in relation to entertainers, Actors Equity have a very vital role in determining who comes in. They have got to be able to generate so many acting positions for everyone brought in and that sort of thing.

Mr Brookbanks—There are a number of other temporary entry categories, some of which require sponsorship, some which are generated by the person from overseas. The two largest categories of interest would be the working holiday-maker. This year, the government has a cap of 55,000 on that program. Students have work rights of up to 20

hours a week. We estimate that there are just under 70,000 visas this year for students. In the other categories that you mentioned, this year we estimate of the order of 2,500 visas for sportspeople and over 7,000 visas for entertainers. There are a number of other categories, such as visiting academics, medical practitioners, media film staff and so on, but the numbers are comparatively small for those classes.

Senator SHERRY—Just flowing on from that, and this is a critical question for me: we have all these people in the country at the moment, and they knew what the rule was when they came into the country. Many of their contracts with their employers allow them to take their superannuation moneys when they leave the country. Some people may spend it; in fact, many of the contracts apparently require the money to be handed back to the employers. A range of contractual obligations have been entered into between the individuals that are already here and their employer. Would it not make more sense to apply the proposed regulations to new entrants coming into Australia so that you are not, in effect, changing the current contractual arrangements between people who are here and their employer?

Mrs Gerathy—I suppose that would be an alternative option. The measure was announced in the budget on 13 May. It took effect from 1 July. So people did have some indication of what was to happen. I understand that, provided they indicated to their superannuation fund before 1 July that they were leaving Australia, they would be able to access their superannuation. So they did not have to leave Australia before 1 July. Obviously a line needs to be drawn somewhere.

Senator SHERRY—Can you see the difficulty? These people have come to Australia; they are in Australia at the moment. In many cases they are senior executives; they might be trainees or whatever. A lot of them are very senior people. They understood when they came to Australia—it is written in their contractual obligation with their employer; they may be here for another year or two years, whatever the time is—that there was a contractual arrangement that says they can access their superannuation when they leave the country. That has now been overridden, effectively, by the new regulations, hasn't it?

Mrs Gerathy—I have not actually seen any of those contracts, so I would not be able to comment on them. It is interesting, because whether you can access superannuation or not is dependent on the rules. I am not sure whether the contract would have a particular clause if those rules were to change.

Senator SHERRY—Many of the contracts do have a clause that stipulates how the superannuation moneys are dealt with when they leave the country. Would it not be more reasonable that the new regulations apply to new people coming into the country? So, over a period of two, three or four years, the people who are here would be able to take their superannuation as they leave and do whatever they are obliged to do with it under their contract. Then it would be very clear in all new contracts of employment that refer to

superannuation.

Mrs Gerathy—That would be an alternative way of doing it. As I said earlier, this particular decision has been taken in this particular way.

Senator SHERRY—We had some evidence from the American Chamber of Commerce, which said that there was a significant concern and reaction. My choice of words is mild compared to those of Mr Blunt from the American Chamber of Commerce. He said that there had been a very strong reaction by people who were already in Australia, who saw it effectively as retrospective taxation. Many of these people are senior executives who will make decisions about Australia. It just seems to me that that is a significant downside to what is proposed.

Mrs Gerathy—I acknowledge that there are obviously different ways of doing it. A decision needs to be made as to what is the most appropriate way. People have different views about what is prospective and what is retrospective in any particular circumstance.

Senator SHERRY—You may have a contract—you came to this country; you are here at the moment—with the employer that says, because the law allowed it, that when you leave the country and go back to, say, the United States or whatever the country is, you can take that money; you may have to return it to the employer or you may be able to keep it to yourself and do whatever you wish to do with it. The law will now say that that is no longer the case. That appears to have inflamed, quite significantly, a number of these people. We could understand if it applied to Joe Bloggs who is coming into the country in a month's time, because that is the law.

Mr Larkin—I can see the problem. The tax concessions represent a significant cost to the government in terms of revenue forgone, and it is perfectly open to the government to make these prospective changes to the superannuation rules.

CHAIR—The government will actually lose money under these arrangements. When these people go out, tax is paid when the moneys are withdrawn, whereas under the new arrangements the moneys will be held here, often at great administrative cost to the superannuation fund holding those moneys. Then, if the money is paid out as a lump sum, you have the tax-free threshold, which is very generous. It seems somewhat strange that the Commonwealth government is losing tax money as a consequence of these sorts of changes. I will quote from and get your response to a submission from John Swire:

We understand that visa category 413 will now form part of an enlarged category 457 and that, after some uncertainty, the current exemption from compulsory S.G.C. contributions will continue to apply for senior management.

Their problem, of course, is the management trainee. They have a number of those which

they bring to the country at great cost. The submission continues:

We believe that it is inappropriate and impractical for different conditions to apply to temporary residents within one visa category and that this exemption should apply right across category 457. Our main area of concern, however, is the situation regarding management trainees.

In terms of the submissions presented to us, we had most of the focus on management trainees. I think this is representative of what was presented. The submission continues:

For some three years now we have been making S.G.C. contributions on behalf of our management trainees, which they have taken with them upon departure. However, we understand that the Bill now under review proposes that these contributions be preserved in Australia until retirement, despite the fact that these employees might never return to the country. This would simply aggravate an already difficult situation and we believe it would be wrong and inequitable on several counts:

- . First and foremost, these contributions should not be required at all. When these employees join the Group they also join the overseas provident fund.

and that is the usual rule with management trainees because they are part of a program, of which coming to Australia is just a part—

The need to make such additional contributions could result in a review of their remuneration arrangements and could even affect their long term superannuation benefits by way of offset.

The big difficulty is that Australia has a peculiar system of superannuation which does not easily fit into the European, so you cannot necessarily put those moneys in a system in Europe. The submission continues:

- . These employees are posted to Australia at the beginning of their careers. They would only be in their mid twenties upon departure and would normally be sent on other short postings around the world. They might never return to Australia at all or might leave and lose contact with the Group. How could they, or we, be expected to keep track over a period of some forty years?
- . It is also quite possible for these selfsame employees to be posted to Australia again at a later stage as senior executives, whereupon they would be exempt from additional S.G.C. contributions under category 457.
- . After departure the contributions (small amounts as, naturally, starting salaries are not high) would either be whittled away by administrative charges or, if these were precluded, become a burden on Australian superannuation funds which would be forced to handle them without fee.

Would you like to comment on those matters that were raised?

Mrs Gerathy—I might comment on them. I would refer back to the Assistant Treasurer's press release. If you take a particular individual, it might look a little odd for

them to be required to have superannuation contributions made in respect of them. The difficulty is that there are labour market distortions and it would also jeopardise Australia's position to negotiate similar agreements with overseas countries for Australian workers overseas. I think it is important to remember that a lot of Australians who go overseas and work temporarily over there are subject to similar types of arrangements. When they come back to Australia they also have their contributions left behind in that country and they may never be able to get them again. There is a range of issues to be taken into account here. If, for example, Australia were to say, 'There will be no superannuation guarantee for any of these people,' that raises difficulties for Australian workers overseas in similar situations.

CHAIR—Some Australian workers already have those situation problems, depending on the country they go to?

Mrs Gerathy—Yes, that is right.

Senator SHERRY—I can understand the point about enhancing the bargaining position. What is happening in practice in this area? It was put to us that it is going to take years to negotiate anything with one country. Look at the brawls that we have been having with the United Kingdom over pension rights. It has gone on for 30 or 40 years.

Mr Blacklow—On the other hand, we do have an agreement with the United Kingdom.

Senator SHERRY—We are not happy with it though, are we?

Mr Blacklow—We are unhappy with the fact that the United Kingdom government does not index its pensions into Australia. It is separate from having an agreement. We certainly have had one with the United Kingdom since 1947, I think. I might just explain the way that the developed countries handle this situation is by way of strict reciprocal exemption. If a French worker goes to Germany—they are known as seconded workers over there—for a period of four years—

CHAIR—That is easy, because they have got the same sort of system. Our problem is, we have not.

Mr Blacklow—Ours is the same in so far as there is a mandated percentage that you have to put in. And our situation is the same in so far as if you do not have an agreement with another country, as between European countries, to receive an exemption from contribution from the other country's system, then you will pay in both countries. If there were not a bilateral agreement between France and Germany, the French company would be paying into two systems. So it is the accepted practice by way of bilateral social security agreements to give a reciprocal exemption.

CHAIR—If there is one. But it was pointed out that to get these all around the world is going to take decades to achieve.

Mr Blacklow—It is difficult to deny that it will certainly take time, but obviously we would logically concentrate on countries that give us the most sorts of workers. And we do have a range of agreements in place at the moment. We do not have one with the US which is interesting, because we have been seeking an agreement with the United States, and for a number of reasons they have not been terribly willing to proceed, but the US situation is a good example. If we had an agreement with the US then, apart from all the other benefits that a social security agreement would engender, the US would expect to have a reciprocal exemption for seconded workers between countries, and we would certainly tackle it on that basis.

Senator SHERRY—So all these aggravated executives from the US are going back to the US—this is part of what the American Chamber of Commerce's Mr Blunt says—very agitated about this and putting pressure on the US to try and get a negotiated settlement on reciprocal rights. It seems a fairly blunt way of accomplishing the outcome.

Mr Blacklow—I do not think that motivated these changes at all. It might result in the US wishing to hurry up negotiations.

Senator SHERRY—It would help, because all these executives are going back to the US very angry because they cannot get their super, and they are going to put pressure on the US government to say, 'Look, get to the party so I can get my super out of Australia. The government has changed the rules and I am a bit upset about it. Get to the negotiating table and settle it.'

Mr Blacklow—You are quite right. Similarly, senior Australian executives going to the US are compelled to contribute perhaps to the US scheme. They are in the same boat. That is why countries bilaterally have reciprocal exemptions, for that very reason.

Senator CHRIS EVANS—So you are basically saying that without the ability to withhold superannuation contributions, our ability to negotiate reciprocal agreements is restricted?

Mr Blacklow—It certainly is. The US is the best example. If we were to give a unilateral exemption, there would be no particular reason why they would give us one, because we would have already given away the exemption.

CHAIR—With many countries there is no benefit to them in doing it, because of their particular superannuation arrangements. There are actually three categories, so you cannot apply universal rules.

Senator CHRIS EVANS—Yes, I do not want to underplay Australia's importance

in the world, but it seems to me that if America has a particular policy about foreign nationals coming to the country, the actions of the Australian government in relation to superannuation probably would not be writ all that large in their thinking.

Mr Blacklow—It is difficult for me to comment on that.

Senator SHERRY—We could be left with a lot of aggrieved former executives leaving Australia who were very angry about what happened to them when they were here, particularly those who expected to get their money out.

Senator CHRIS EVANS—Is the primary question not one of good public policy in Australia, though? It just seems to me that we have a lot of nefarious sorts of issues that seem to be impacting on whether or not we run a good public policy in Australia. This seems to be one of them.

Mr Blacklow—Yes, all I was attempting assist the committee to understand is the quid pro quo.

Senator CHRIS EVANS—Yes. I am not trying to be argumentative and I appreciate that it is an important point. Perhaps I am missing something, but perhaps people could respond to the proposition. I cannot understand why we should not argue for simplicity in the superannuation system, if we can—why we would not make everybody pay SGC, every worker in Australia, and then when people leave Australia they take their superannuation contributions with them. What they do with it then would be a question for the governments of where they are resident.

Essentially, we have no interest as to whether an executive is here for a year or so, saves their superannuation, reinvests or whatever. They are not going to fall on our social security system. Our SGC is part of our public policy to look after our residents to prevent them becoming a burden on us. If non-residents come into the country, what happens to them in retirement, quite frankly, is not our problem. So apart from the point Mr Blacklow made—which I take—what is to prevent us just having a simple proposition that SGC is paid by all workers while in the country; that those who leave the country, not later to return—or they may come back, in another temporary situation, but they are permanent residents of Australia—take their contributions with them. Therefore the administrative burden on local funds is withdrawn. But while they are in the country they are treated as an employee in the same way as Australian residents are, and therefore the labour market distortion problems, et cetera, are not an issue.

Equally it seems to me, therefore, the fact that people, when they leave, can get access to those contributions is unlikely to be a deterrent to business in terms of locating employees here. It is, if you like, a forced saving for them, and would meet some of the business concerns. I am just putting that up to get the argument for why that will not work, because this seems to me a particularly complex way of going about it.

Mrs Gerathy—Yes, there are a number of issues on both sides, such as should all workers be subject to superannuation guarantee. Then the next question is the one that you have just posed, which is should people leaving Australia be allowed to take their superannuation moneys. This is also a complex question, and there are a number of issues that need to be considered on whether you should or you should not do that.

One difficulty is that there is anecdotal evidence that under the previous arrangements people were providing false evidence that they were leaving Australia.

CHAIR—But they were Australians.

Mrs Gerathy—Yes, they were Australians.

CHAIR—We do not mind about that problem.

Mrs Gerathy—But that is one particular difficulty we would have to deal with. The other thing, too, is it actually brings our arrangements more into line with overseas practice. We were talking about the US before and this is a situation that they have over there as well. That is not necessarily a reason why we should follow it, of course, but there is a range of issues.

It also facilitates the negotiation of reciprocal social security arrangements. The other thing that is very important to consider is that those superannuation moneys have received generous tax concessions, so there is a number of issues that need to be taken into account. I accept that in a lot of cases these people will not come back to Australia, but in a number of other cases that they could very well come back to Australia. They might find it such a suitable place for their particular lifestyles that they do actually want to come back here and retire, and in those circumstances we would not want them falling back on the age pension system. So there is a whole range of issues, even though I would accept that there are—

Senator CHRIS EVANS—That is very hypothetical: that people on temporary resident visas in Australia may choose to come back and may fall onto our social security system. Quite frankly, is that a good way to plan our superannuation system?

Mr McDonald—I think one point which is not anecdotal is that superannuation is supported by generous tax concessions.

Senator SHERRY—Just on that point, most of these people, or a lot of them, will be earning more than \$70,000. Do you argue that under the new superannuation tax provisions, that they are generous any more?

Mr McDonald—Under the surcharge, I think, compared to salary, super is clearly still concessionally treated.

Senator SHERRY—Yes, but is it generous?

Mr McDonald—It is a concession, and its a concession provided by—.

Senator SHERRY—Yes, it is a concession, but can you seriously argue it is a generous tax concession for people at that income level?

Mrs Gerathy—Obviously that depends on people's perception of what is generous or not, but if you have got superannuation in the system for 30 or 40 years, then by the time you take into account the compounding effect they are paying significantly less tax than what they would have if they were taxed as salary.

Senator CHRIS EVANS—How many people on temporary entry visas here stay 30 or 40 years? We seem to argue both sides of the argument when it suits us. We were talking about temporary entry and then we start arguing about them having 30 or 40 years in the tax system and retiring here. Am I missing something or are we—

Mrs Gerathy—No, I do not think you are missing anything. I think the difficulty is that there is a range of issues and factors that need to be taken into account, and there is no one issue that is going to say this is the reason for going one particular way as opposed to another particular way. You need to take all these factors into account and balance it up and make a judgment.

Senator CHRIS EVANS—We have got to justify whether or not they are real factors or anecdotal concerns. That is why I am trying to test them. I am not trying to be rude, but it is our job to test these propositions, and quite frankly some of them do not stand up as being all that strong in my view.

Mrs Gerathy—It would facilitate the negotiation of reciprocal social security agreements; I think that is a fact.

Senator CHRIS EVANS—Yes, I will give you that one. It is worth some consideration.

CHAIR—Only some.

Senator SHERRY—You have got to weigh up the outrage of these executives who, according to the American Chamber of Commerce—

Mrs Gerathy—The interesting thing about the outrage of the American executives going back is that I am not sure that I have heard any outrage of Australian workers going to America and coming back here.

Senator SHERRY—They know what the rules are. What is happening is that the rules have been changed for the people who are currently in Australia. That seems to be the big bug that is affecting the executives who are here. I do not think you would have quite such a reaction if the rules applied to people who came in after the rules had been changed.

Mrs Gerathy—Okay.

Senator SHERRY—Unfortunately, and I do not like to admit it, American executives do have a little bit of influence in the world. Mr Blunt has done a survey; it was fairly comprehensive. He provided us with a range of comments about this from those American executives. It was not too flattering about their view of Australia as a country. I accept the negotiating thing; I think it is actually quite a clever way of putting on the pressure. But there is a downside to all of that.

Mrs Gerathy—I think it is just a matter of taking all these factors into consideration and weighing them up.

CHAIR—Can I just test out the question of cost to revenue? It has been submitted to us as a committee that none of us has really seen any figures that would show the effect that change in the preservation rules is intended to have on government revenue. It was pointed out that prior to 1 July 1997, if an expatriate on temporary entry permit is under 55 years of age, and leaves Australia permanently, the payment for the Australian Superannuation Fund is taxed at 20 per cent plus the Medicare levy. So we are actually getting revenue at quite a healthy rate. Now, under the proposed change to the preservation rules, the money will stay in Australia until the expatriate is at least 55 years of age and retired. In these circumstances, the first \$90,497 from 1 July 1997 will be received tax free. The government will receive a tax of 15 per cent on the earnings to the fund less imputation credits.

In view of the short period of time the contributions have been made to the fund on behalf of the temporary resident, it seems unlikely that the government will collect any revenue where the expatriate is paid a benefit. It seems that these measures will result in a loss of revenue to the government. Most of the witnesses were concerned about the trainees who come here—who tended to be reasonably young—as part of a career path. It does seem that we could be losing revenue.

Mrs Gerathy—Yes, it is acknowledged. It worried me—I could not find it in here, but I did not bring the right paper. The budget paper, on page 19, indicates that there will be a medium term fiscal cost due to reduced tax receipts from lower withdrawals from superannuation. So it is accepted that that is the case. The tightening of the preservation rules will also have a fiscal cost.

Senator SHERRY—We can save you money. We can save Treasury money.

CHAIR—Before we pass on from the visa requirements to some of the other issues, have you had any further questions on these, or the issues raised by other witnesses?

Senator SHERRY—Just one point. I have been contacted by two former police officers in Tasmania who are quite outraged. They are going overseas to live and now they cannot access their money. They had actually decided to retire from the police force and collect their superannuation. One is going to the UK and one is going to New Zealand. Would it not be reasonable to have some transitional provisions for people in those circumstances? The rules come down, bang; and they have set in train plans which are very substantially affected by their not being able to access their superannuation.

Mrs Gerathy—I think this gets back to what we were talking about before: about when new measures are introduced; the date of effect; and whether there should be transitional arrangements or not.

Senator SHERRY—Did you consider transitional arrangements?

Mr Brown—Transitional effect, yes.

CHAIR—It was four days, though, wasn't it?

Mr Brown—No. From the time of the budget announcement, because that was clear cut in respect of the permanent departure overseas. The actual effect of the transitional arrangement was that the person needed to have made written application to their trustee by 1 July, and needed to persuade the trustee that they were permanently departing overseas. They did not have to have resigned their job, they did not have to have actually left. They basically had to have established a position to the satisfaction of the trustee. That was what had to be done by 1 July.

Senator SHERRY—And what if they had not done that?

Mr Brown—If they had not done that, then the new rules apply.

Senator SHERRY—They were caught.

Mr Brown—Yes.

Senator FERGUSON—How old were these men, do you know?

Senator SHERRY—One was 56, one was 58 or 59. Late fifties.

Senator FERGUSON—And they could not access—

Mr Brown—If they have retired, of course, they are not caught by the preservation arrangements. It does not matter. If they are post 55 and they have retired from their employment, they are entitled to their benefits.

Senator FERGUSON—I am just wondering whether I could ask a couple of questions on the \$500 threshold before I go, because it is something I think that we are all interested in. Have you got any current figures on the number of inactive accounts of less than \$500 that are currently in existence?

Mr Larkin—The ISC has figures on the number of inactive accounts—

Senator FERGUSON—But not those that are less than \$500?

Mr Larkin—Not necessarily those that are less than \$500, no. I could take that question on notice and find out what figures we could.

Senator CHRIS EVANS—I would be interested to hear because it is a case of administrative burden.

Senator FERGUSON—In the past this committee has recommended in, I think, two reports that with the introduction of member protection for small amounts the \$500 threshold be removed. Yet, in fact, we do not seem to have any indication, particularly, of how many of those accounts of less than \$500 contain very small amounts. I am talking about perhaps less than \$100 or \$200. Is it possible to differentiate, from the figures you have, how many accounts are very small accounts? I will use a figure of \$200, and those that are between \$200 and \$500.

It seems to me that, with the removal of the threshold, the danger that we leave ourselves in is the cost of maintaining those inactive accounts. If a significantly large proportion of those had less than \$200 in them, I think that perhaps there would be some reason for considering the lowering of the threshold, even, so that those who are genuinely not going to be affected by those very small amounts could be removed from the system. I am just wondering whether anybody could comment on that sort of suggestion?

Mr Brown—There is always going to be a flow of people with very low amounts, where you have people commencing a job, and particularly those who are moving in and out of the work force.

Senator FERGUSON—That is why I said inactive accounts. I think it is important that we differentiate between inactive accounts and those who are building up to that threshold.

Mr Brown—Yes.

Senator FERGUSON—There would have to be millions of them.

Mr Brown—I understood there were something like two million, but I do not know.

Mr Larkin—The ISC can undertake to apply to get those figures for you. But the only point I make is that funds would not be required to hold on to those accounts. It would be open to them to transfer those moneys to an eligible rollover fund.

Senator FERGUSON—I know, but there is a cost to somebody.

Senator SHERRY—There is a cost to that, too.

Senator FERGUSON—The cost to transfer—

Senator SHERRY—There is the transfer cost; then there is the cost of the administration of the ETPs. I think it is a very important issue, Senator Ferguson—weighing that up against the total increase in national saving of what are, in many cases, infinitesimal amounts of money.

Senator FERGUSON—Ten dollars, twelve dollars—

Senator SHERRY—Is it worth it?

Senator FERGUSON—My wife had one for \$24, that is why I was alerted to the numbers of accounts that might exist.

The question I am really asking is can we get some figures on how many of those amounts are very small amounts? I think if you are looking at the figures, close to \$500 is a justifiable argument for maintaining the preservation. But for preserving any amounts under \$500, whether \$5, \$10, \$15 or \$20, is putting a crazy administrative burden on somebody, whether it be the rollover fund, whether it be the fund that is managing it or anybody else. I do not know if anybody would have any comments on the likely effect of that sort of proposal.

Senator SHERRY—Just on this same issue, it has been announced that SHAR will be abolished. What is going to happen to the small amounts held in SHAR?

Mr Heferen—I think the people on whose behalf the money is held will need to roll that over to an RSA or some other fund.

Senator SHERRY—What if they do not? How many people are in SHAR at the moment, approximately?

Mr Heferen—Good question. On the figures I have got here—this is some summary information on SHAR—a total of 61,942.

Senator SHERRY—So SHAR ceases to exist. A lot of these people would not even know they have got money in SHAR, I suspect.

Mr Heferen—If it gets to the stage that SHAR is wound up and the tax office is holding money on people's behalf, I suspect we would be contacting these people.

Senator SHERRY—What if you cannot contact them?

Senator CHRIS EVANS—How many lost members are there?

Mr Heferen—I think that is part of the entire lost member issue relating both to SHAR and also super funds, generally.

Senator SHERRY—Yes.

Mr Heferen—I gather that there is a lost member register being created.

Senator FERGUSON—Senator Sherry, are you quite happy if we get the numbers of lost members as well, because that is another important thing.

Senator SHERRY—The proposal is to get rid of SHAR from whatever date. My concern is that I am sure you will not be able to contact all the 60,000-odd people. What happens to the money in those circumstances?

CHAIR—I think you might have to take that on notice.

Mr Heferen—Yes, I think I will have to.

Senator SHERRY—Because I am not confident that you will be able to contact all of those people. In fact, I am sure that you will not be able to contact many of them. This is a problem we get all the time. You say roll it over into RSAs. If you cannot contact them, or they do not know about it, what is going to happen to the money?

Mr Heferen—I will take it on notice.

Senator FERGUSON—Is it not a fact now that after a certain period of time, a lost member's account is rolled over into consolidated revenue, or is there no length of time—

Mr Larkin—Sorry, a lost member's superannuation fund?

Senator FERGUSON—Yes, a lost member's superannuation fund. After a certain period of time, is—

Mr Larkin—Yes, if they are aged pension age.

Senator FERGUSON—Aged pension age?

Mr Larkin—Yes.

Senator FERGUSON—So it could be forty years.

Mr Larkin—Yes.

Senator SHERRY—My concern is with the abolition of SHAR. You have got to have some way of holding the money for people whom you cannot contact, or who do not do something with it. I am sure there will be some.

Mr Heferen—Certainly, yes.

Mr Larkin—If I could just make one further comment in relation to the inactive points? It is my understanding that the industry were quite supportive of removing the \$500 threshold. It has not been evident to the ISC, in our consultations in implementing the regulations, that this issue of the cost of administering inactive accounts is a major issue for the industry.

Senator SHERRY—ASFA, certainly. But some funds have also expressed concern about not allowing people who do apply to clear their books and get those amounts off their books.

Mr Larkin—Yes.

Senator SHERRY—I certainly know that there are some funds; and there is a difference of view about it. I suspect that if you were a fund with a very small proportion of small amounts under \$500 that were inactive, you would not be terribly worried about it. But if you are a large fund—from what I understand, discussing it with them—a lot are virtually tearing their hair out about what to do with this.

Mr Brown—The concern of a number of the large industry funds—and particularly those covering industries characterised by frequent changes of employment—has been that people would cease employment with their balance below \$500, take it out of the fund, recommence employment some time later and, as the balance would build again towards \$500, they would change again. Now, the flip side of the administrative costs of maintaining a small amount is the cost of establishing a new account when somebody actually re-enters employment. I think that that is something that does need to

be taken into account. That has been addressed in some of the industry funds. Even when it was possible to withdraw money for amounts of less than \$500, they would put on a minimum six month waiting period before they would pay that out—basically to guard against the prospect of the person re-entering the industry within that time.

Senator FERGUSON—Surely if there are a number of people who do do that, and you have a very low threshold, they will go over the threshold at a very early stage. They are likely then not to be able to build up towards the \$500 in a casual job and then pull out and start again. If it is a very low threshold it is possible to eliminate the problem of very small accounts that are inactive—

Mr Brown—The lower the threshold, the more arguable your position is.

Senator FERGUSON—but still do what you were trying to do, and that is stop people getting up to a level and then withdrawing.

Senator SHERRY—Particularly with the higher SG. I mean, we should not forget, with a very low SG, you had much lower amounts to start with. The amounts coming in now are higher and the balances are building up higher, because it is now six going to nine.

Mr Brown—I do not want to argue the point, but there is also the increase of part time work and all sorts of other factors. There are still lots of people with small balances, I suspect.

Senator SHERRY—Do you have any figures on the total amount withdrawn each year from accounts with less than \$500? How many people are we talking about who actually do it at the moment? And what sort of money are we talking about?

Mr Larkin—We could consult with the tax office on that, because it may require exploring the ETP information. But yes, we could take that on notice and provide a portfolio response.

CHAIR—Could I just come back to this immigration issue? The government's proposal is not merely limited to benefits accruing on or after 1 July 1997. It is structured to prohibit access to the benefits which had occurred prior to that date—I am talking about existing expatriates, trainees et cetera, who are in Australia at the time—and which are attributable to contributions made under arrangements which were not expected to be subject to any restricted access at the time the contributions were made.

So the proposed legislation for expatriates who are in Australia really does have a retrospective application. And in most other areas where changes have been made to superannuation, there has always been a transitional or grandfathering arrangement. Why was a grandfathering arrangement not considered in relation to expatriates who are in

Australia at 1 July?

Mrs Gerathy—I think that gets back to what I was saying before, that where new measures are implemented there are obviously a number of ways in which they can be implemented, ranging from totally prospective—and each person has a different view about what is prospective and things like that. I could say that these measures are prospective, because they were announced on 13 May and took effect from 1 July. So I do acknowledge that, as you have read it—

CHAIR—In relation to superannuation?

Mrs Gerathy—Yes. Well, with some of the measures in relation to superannuation, it just depends. I think this committee would be aware that with the number of transitional provisions that we have in superannuation at the moment, it leads to a few complexities.

Senator SHERRY—How would a transitional provision, in this area, make it more complex? As people come and go, over two or three years, you would get all the new entrants anyway.

Mrs Gerathy—Yes, I would agree. One concern is the Australian residents who are leaving. The things you would have to take into account are: would you have a different rule for them and would that have applied from 13 May, or would that have applied from 1 July? I think some people think perhaps it should have been a year later. It is a judgment as to what is appropriate in the particular circumstances.

Senator SHERRY—With the people leaving Australia, there are some caught who were planning to leave, but had not made application. Now, I am not convinced that, say this measure were to take effect from the end of the year, we are going to have a flood of people leaving Australia because they cannot access their super after the end of December. But at least those who were planning to leave, but had not made application, could do so. It seems to me, three or six months would have been reasonable in most circumstances without having people leave the country because of it.

Mrs Gerathy—As I said, it is just a range of factors, and people will have different views about the appropriateness of them all. I mean, this was six weeks—

Senator SHERRY—I have got an example of a guy in, I think, WA who had gone through a divorce, was going to remarry and had not made application. He has, I think, about \$30,000 or \$40,000 and is moving to the USA and he cannot access his money. He did not apply in time. And I am convinced—I am sure—that he had every intention of leaving the country. He just did not apply.

Mrs Gerathy—The other thing to remember is that when people put money into

superannuation, either compulsorily or voluntarily, it should be done on the basis that the money should be available to them in retirement. If they leave before that date, you have to make a decision about whether it is appropriate or not for them to actually access money which has been set aside for retirement, before retirement age.

Senator SHERRY—On that basis, you would not allow access for any purpose.

Mrs Gerathy—Yes. In an ideal situation, that would be one thing. But the reason for allowing access, particularly in financial hardship and on compassionate grounds, is that it enhances community acceptance of the superannuation system. As I said before, there are a range of issues and factors that need to be balanced.

Senator CHRIS EVANS—Maybe the answer is to make them sign a declaration that they have no entitlement to claims on Australian social security. But that is a public policy issue—the only interest we have for people leaving the country with their superannuation money is the threat or the prospect that they might return and claim social security at some time in their retirement. Isn't that our only public policy interest in this?

Mrs Gerathy—That is one interest, but the other interest, as well, is the rationale for the superannuation system and that is to provide a greater level of income in retirement for residents than would be available from the aged pension system alone. The resident and the non-resident distinction does cause difficulties.

Senator CHRIS EVANS—Yes. I guess it is not possible, but it just seems to me that if somebody is saying they are leaving the country for good and they want access to superannuation—

Senator SHERRY—I do not like our chances. I think we struggle to get it right in Australia, let alone be confident that over the next five or ten years we will have a world series of negotiations with reasonable outcomes with all the countries we are concerned about. I suspect you and I will be long retired before all that happens, if ever.

Mr Blacklow—On the other hand, we do have 11 agreements, and we are actively currently negotiating with eight other countries. Now they are the countries with which we have the most relationship, as a matter of fact.

I should have mentioned earlier that, if in the overall scheme of things—as Treasury said—it is in the full picture, an international social security agreement does guarantee the payment of overseas pensions into this country. It would guarantee that the US would pay its pensions into Australia. At the moment, we receive some \$750 million paid into Australia by way of overseas pensions from our agreement partners. An agreement with Germany, for example, would increase that by about \$20 million per year. So agreements do have a net effect into Australia.

Senator SHERRY—Could you give me a list of the countries, with just some detail on that?

Mr Blacklow—Certainly.

Senator SHERRY—I will not go on, because it is a bit of a side issue and I think that we could get caught up in it at the expense of other issues, but I would be interested to see. Who is negotiating this, by the way, in the department?

Mr Blacklow—Bernadette and I.

Senator SHERRY—Great job. If I were looking for a retirement job that would keep me occupied for the next twenty years—

Mr Blacklow—Thank you.

CHAIR—Is there some self-interest in this?

Mr Blacklow—I should say of course that I intend to remain in Australia.

Senator CHRIS EVANS—You don't have to do international inspections, do you?

Mr Blacklow—Well, if we are receiving \$780 million—

Senator CHRIS EVANS—Yes, it is worth it.

Mr Blacklow—I should add, of course, that an agreement with the US would certainly be a net plus to Australia.

Senator SHERRY—Have you got an agreement with Japan?

Mr Blacklow—No; but Japan would, in our view, be a country where we might have a limited agreement only to avoid double contributions. It would not necessarily be a full cost sharing agreement. We have received a number of approaches already from our existing partners, and new countries—like Chile for an anti-double contribution situation for Chilean workers being seconded here, for example. And Korea as well.

Senator SHERRY—Can we just come to this financial hardship issue? How many people each year, over say the last five years, have actually applied and accessed money through hardship. Do you have the details?

Mr Brown—Yes. Going back, my figures start in 1988-89 when there were 3,108 applications; in 1989-90, 4,692; in 1991, 11,618; in 1991-92, 25,815; in 1992-93, 32,922; in 1993-94, 36,184; in 1994-95, 39,480; in 1995-96, 55,199; and in 1996-97, 78,648.

There have been a couple of points where there have been quite dramatic increases in the rate of applications. Certainly the trend line was accelerating.

Senator SHERRY—You do not have to read out the amounts, but do you have the total quantum of money? You might just provide the information to the secretariat.

Mr Brown—Yes, sure.

Senator SHERRY—What was the total quantum of money in the last year?

Mr Brown—It was \$254 million.

Senator SHERRY—That is very substantial. There is obviously a mix of criteria, because there were not any clear criteria up until what we have got before us as proposed. I understand that the ISC was not giving these applications any close scrutiny. It was really pro forma applications and let the money go through, or let the application go through.

Mr Brown—I think that that is slightly unfair. The basic criterion was the statement by the applicant that their outgoings exceeded their income, and there had to be some supporting information for that. I think it is fair to say that as the number of applications accelerated, the quality of decision making probably declined; or the extent of scrutiny of those applications declined, particularly for those who were seeking smaller amounts. Clearly, if somebody were seeking to take a very large amount out of the superannuation system, that would have been subjected to a full and proper scrutiny.

Senator SHERRY—Do you have any idea, given the new test that is contained in the regulations, what proportion of those people would have met the new test that we are looking at here?

Mr Brown—We do not know that precisely. The information that I have from our staff who were assessing the applications was that in the order of 65 per cent stated that they were receiving some social security payment. But it does not follow that all of those 65 per cent had been on it for a year. Nor does it, in fact, follow that they were all receiving an income support payment. Some may have said they were getting a social security payment because they were getting family allowance. So we do not have good data on that.

Senator CHRIS EVANS—It just occurs to me to ask: have you done a comparison between the growth in the number of applications and money outgoing with the general growth in the superannuation funds? Because it seems to me that, at first blush, there is this tremendous growth; but equally, since 1988 there has been a tremendous growth in the total number of superannuation funds and the total number of people contributing. A fairer comparison would be to see what percentage of the total this represented in 1988 and what percentages it represents now.

Mr Brown—Yes.

Senator CHRIS EVANS—Otherwise, I think we are going to have an overreaction to what is occurring here.

Mr Brown—I think that one clear indication is that the number of applications doubled between 1994-95 and 1996-97. I have only got the figures for 1995-96 and 1996-97, but the amount released increased by 50 per cent. Now, that is well above the overall rate of growth in the superannuation system.

It is our view that one of the factors which contributed to that rate of growth was, undoubtedly, the extent of superannuation cover: more people having more than \$500 and the extension of superannuation cover to people who were likely to be on lower incomes and suffering broken employment patterns. There was also, quite apparently, the factor of an increased awareness of the capacity to claim due to financial hardship. There was a perception—certainly among trustees, and I believe among some financial counsellors—that it was virtually automatic that if you put your hand up, then you would get it. So there was a motivational effect there, as well as simply those people who had some money they may have been able to claim.

Senator CHRIS EVANS—I accept that; but to assess the one you actually need to measure it.

Mr Larkin—Yes. We can provide that information. Just for the last two years, 1995-96, the amount released represented 0.07 of total super assets, and in 1996-97 it was 0.09 of total super assets.

Senator CHRIS EVANS—Over time you would want to measure it against economic fluctuations.

Mr Larkin—Yes.

Senator SHERRY—Do you have any estimate with the new regulations what number of people could potentially claim each year on the basis of the new test? Incomes for 52 weeks and 39 weeks if you are over 55?

Mr Brown—We do not have a clear indication. The number of people who have been in receipt of social security income support payment for that time is very large, but there are—

Senator SHERRY—What is the number?

Mr Brown—I would have to defer to Eric.

Mr Rojahn—It is something in the order of one million.

Senator SHERRY—Don't we run the risk that once you get this new testing anyone in that category will apply and expect to get their money automatically on the basis of hardship.

CHAIR—That is right.

Mr Brown—I think there are two additional considerations there. One is that people must make the decision to apply, and it has been quite apparent from the figures to date that it has been a small minority who have applied. It has been only 65 per cent of the 78,000 who have actually applied.

The second consideration is that they must have some superannuation money there available—

Senator CHRIS EVANS—I think the interesting thing to me was the evidence in Melbourne from one of the financial counsellors. I do not want to disparage his evidence—he gave very good evidence—but it was clear that they had responded to the rules in a way that indicated an institutionalised response. They had become aware that you could access super under these conditions, so that if they were providing counselling to someone in a difficult situation, the question at the top of the list was: have you got any super; can we access that? I suppose what Senator Sherry is reflecting on, and about which I am also concerned, is that if you can say 52 weeks on social security, you are in. Everybody who provides financial advice to social security recipients will be briefed as to the availability of the access to super. Far from actually stemming the flow, what you are actually doing is institutionalising it. What you are actually saying is: these are the criteria under which you get your money. Therefore, for everyone who provides advice to people in hardship, that becomes the first port of call.

Senator SHERRY—You could get the absurd situation where a person on DSS benefits for nine or 10 months, who might have \$1000 or \$2000 in their super, decides to wait—and they can do it—until their year is up to access their super. Did you consider not just this test but also a subjective test in addition to this?

Mr Brown—There was and there is the capacity for trustees to apply a subjective test in addition to this. What is legislated is a minimum threshold. Now, one response of many trustees to the accelerated rate of release on the grounds of financial hardship was to amend their governing rules to prohibit any release whatsoever from those funds, and that was one response.

CHAIR—Do many trustees do that?

Mr Brown—Sorry?

CHAIR—Do many trustees do that? Apply an additional test?

Mr Brown—One of the significant industry funds that I am aware of does apply an additional subjective test. It is not something that most have been anxious to do, because as soon as you introduce a subjective test you expose that to challenge. You expose the trustee to potential complaints to the Superannuation Complaints Tribunal, and that is not something that most of them relish. But it is open to them to do that, to either impose an additional objective test, if they wish, by way of amendment to their governing rules, or to provide for a subjective test.

CHAIR—I tend to agree with Senator Sherry. Once you have attained the 52 weeks, certainly financial advisers would have it on top of their list to try and access that money, because anybody who is on these arrangements is deemed not to have a lot of cash around.

Mr Larkin—One factor which informed the policy formulation of these measures was the statistic that approximately 65 per cent of current applicants are on DSS benefits and if you take that figure alone you have to conclude that this will result in some tightening of their own tests and therefore—

CHAIR—But they might have been assessed earlier, under the old rules.

Mr Larkin—Yes.

CHAIR—Of course, that could affect your percentages.

Mr Larkin—Our expectation is that these new rules will result in a greater tightening than would otherwise have been the case if the discretionary system remained.

Senator SHERRY—Yes, but there is a problem with that. Let us assume that there are a lot of people who fit into this new category who do not know that they could apply for super under some sort of hardship provision—and I think there are still a lot of those people out there in the system. Once we have got this test it would obviously be heavily advertised—and I think funds would provide that information—and it seems to me that it will just become the norm for anyone in this category—the vast majority of them—so you will not necessarily have a decrease in the numbers. But obviously economic circumstances, et cetera, would affect that. Everyone I know in Tasmania who loses their job—and there is longer term unemployment there for a much greater number of people—would go for their super, and why wouldn't you? It is common sense, from their perspective.

I know it is hard to get into individual cases—and you are looking at it subjectively—but there are people on DSS benefits for this period who, in my view, generally should not get their super. Maybe they are a gambler. Should you allow access

to super in those circumstances? I know it is subjective. And there may be people not on DSS whom, subjectively, a reasonable person would conclude should be able to access their super on the basis of hardship. I agree with the philosophy. We do not pay pensions to people early, or part of their pension, to tide them over because of hardship. Why pay their superannuation early?

Mr Larkin—Yes, I take the points. I suppose the difficulty with introducing a subjective test, though, is that you move back down the road of the current problems that the ISC faces, or the pre-1 July 1997 problems that the ISC faced with the discretionary system. I guess there is a trade off between whether you want some objective, transparent, simple set of rules or whether you want to overlay that with some subjective test which complicates—

CHAIR—But you have got subjective tests in relation to the compassionate reasons that this can be paid out?

Mr Larkin—Yes. They are quite defined in legislation now; most of the subjectivity has been removed.

CHAIR—We understand that there are no appeal rights against decisions in relation to the early release of superannuation moneys on severe hardship and compassionate grounds. What do you see as the advantages and disadvantages of appeal rights in this area?

Mr Brown—In terms of the severe financial hardship ground, that is now fully objective. It is defined by the meeting of a criterion—they can produce a letter from social security or DVA demonstrating they have satisfied that criterion—then it is subject to the fund's governing rules. If the person is dissatisfied with the trustee's decision in their particular case, there are the normal complaint mechanisms available through the fund and to the SCT. Although in my view it is very unlikely that that will happen with any frequency, because my expectation is that most trustees, where their governing rules permit it, will actually pay on the basis of the social security advice.

In relation to the compassionate grounds, while there is not a right of appeal into the administrative appeals tribunal, we will be maintaining the arrangements which have existed to this point; that is, that there will be an internal ISC review if a person complains. My understanding is that there have already been a couple of requests for reconsideration of a knock back on a request on compassionate grounds. That revisiting is done in an area of the ISC quite separate from the area which is making the primary decisions.

Senator SHERRY—You would have a problem in appeal in the courts if that was not the case.

Mr Brown—Yes.

Senator SHERRY—Yes, that is right.

Mr Brown—Any further appeal is only in terms of the AD(JR)—to the Federal Court.

Senator SHERRY—How did you come up with the formula of 52 weeks if you are under 55 and 39 weeks if you are over 55? What is the rationale behind that?

Mr Brown—The rationale for the difference between under 55 and over 55, I suppose, is twofold. One is that if a person over 55 considers themselves to be retired, they would have access in any event. Secondly, if they consider themselves not to be retired, it was a matter of good design to align the early release provisions with the social security means test provisions.

Senator SHERRY—What about the 52 weeks?

Mr Brown—As I understand that decision making process, it was simply a figure where it would generally be conceded in the community that a person who had been on an income support payment for that time could well be in severe financial hardship.

Senator SHERRY—Let us take a situation where a person is made redundant or is retrenched. It seems to me there is some logic in those circumstances to ask why they should wait the 52 weeks. The payment of the superannuation, or part of the superannuation, may be very useful for that adjustment process when they have lost their job. They may have to move interstate; they may have to be involved in some retraining. Was any consideration given to that type of concept?

Mr Larkin—Conceptually it goes to go back to this idea that the purpose of superannuation is for retirement income and there is a whole social security system to provide for people who strike hard times in the vicissitudes of life. It was really just clarifying the purpose, and in those circumstances, the policy objective would be to make the person's first port of call the social security system before accessing their own income.

Senator SHERRY—I can understand that. I am frequently confronted with former workers, particularly those who get to middle age—late 40s, early 50s—who frankly find it very hard, given the likelihood of finding alternative employment in the current economic environment in my state. I do not accept that the whole country is in the same sort of difficult position my state is in. This money would be very useful if it was applied usefully in terms of moving, retraining, et cetera, prior to 52 weeks, rather than people having to wait for 52 weeks on social security, which many at that age find very difficult to do. Did you not give any consideration to looking at some sort of functional definition, say as a consequence of redundancy, rather than just a pure time definition?

Mr Brown—I think one of the considerations was simplicity. You can design a

system to meet a whole array of circumstances, but the price of that is layering complexity on complexity. A further consideration was lack of intrusiveness. The situation that we had was quite intrusive, where people had to provide full details of their income and their family expenditure to the ISC, which for any other purpose would have had no interest in those things. With the model that has been accepted by the government, it is simply piggybacking on information which people have given to Social Security in the context of securing their income support. So it minimises intrusiveness. Again, if we were to add further criteria that people could satisfy, there would need to be further information gathered for that purpose. In relation to the specific example you quote, where somebody is made redundant, most commonly there is now some form of retrenchment payment which serves the purpose of providing at least some assistance over that transitional period.

Having said that, I think we all acknowledge that it is a particularly difficult transition period. The question that we would have to ask from the point of view of retirement income policy and superannuation is this: is superannuation the appropriate source for tiding people through that difficult transitional period?

CHAIR—The committee understands under the new hardship rules that Austudy is not regarded as a Commonwealth income support payment. Can you tell us what progress there has been in making Austudy part of a common youth allowance? If Austudy were to be included in such an allowance, would it then be regarded as a Commonwealth income support payment for the purposes of early release of superannuation?

Mr Brown—In terms of the current Austudy position, where people are choosing to study and are qualifying for Austudy, that is a decision over which they have full control—it is a choice—in contrast to the position of most people in receipt of an income support payment from Social Security or DVA, where that income support is provided in response to the exigencies of life—where people become ill or are responsible for the bringing up of a child by themselves, something to that effect. These are matters over which generally they have no choice.

Under those circumstances there is no consideration that accessing the superannuation system may play a part in their decision. For somebody choosing to study, it is quite reasonable, because of that element of choice, that they can say, ‘I will be getting so much in the way of Austudy; after a year I can access my super.’—and make a decision based on the presumption of that access. I think that the probability is that it would detract from the idea of superannuation as being provision for retirement.

CHAIR—In relation to mature age students, we had a submission from an ex-banker, I think it was, who was made redundant in a town where there were not opportunities for him to ply his trade. True, he had a choice of either staying on social security or trying to make a life for himself. Under great hardship, he went back to study. These rules seem to impact on him pretty severely because Austudy is not regarded as part of the Commonwealth income support payment.

Here we are, trying to encourage an upgrading of qualifications, particularly in areas of very high unemployment, where people probably would not get a lot of money for their house if they moved to a city, and people have gone into education, upgraded their qualifications and had to live a very, very frugal and difficult life. It is a very compelling case.

Mrs Gerathy—I think it goes back to what we have been saying—

CHAIR—You might say it was choice. But he had a limited choice.

Mrs Gerathy—I think it goes back to what the purpose of superannuation is. That might be more an argument about the level of Austudy rather than whether they should be able to access superannuation.

Senator SHERRY—So you are suggesting to us that the level of Austudy should be increased?

Mrs Gerathy—No, that is not what I said.

Senator SHERRY—I know it is not what you said; is that what you are going to suggest?

Mrs Gerathy—No, that is not what I was suggesting. I was just saying I think we are talking here about whether money should be released from superannuation before genuine retirement, and that is what these measures are dealing with. Obviously the decision is to be made about the circumstances in which that should be available.

Mr McDonald—I think we should also remember that where we talk about a bona fide redundancy there is provision in the Tax Act separate from the superannuation system for a tax free amount to be received. So for the 1997-98 year, an employee could receive \$4,548 plus \$2,274 for each year of completed service. That would be free of tax and able to be accessed right now.

Senator SHERRY—But not every worker receives anything like that.

Mr McDonald—I understand that, but it is important to bear that in mind in the context, particularly when talking about payments like redundancy payments or something like that, that it is not necessarily something that is in the superannuation system to start off with.

CHAIR—The people we are talking about actually move frequently from job to job just to exist. Technology overtakes them and they have got to do something.

Senator SHERRY—Senator Newman in her press release on 30 June said:

The streamlining of the superannuation regulations announced in the 1997-98 budget means unemployed people who are not retired but who are affected by the assessment of their superannuation will be able to access their superannuation on the grounds of financial hardship, subject to the rules of the superannuation fund.

How does that press release on 30 June reconcile with these new hardship provisions?

Mr Rojahn—That is in reference to a matter that was raised before, that there is an alignment of the conditions for accessing superannuation benefits on grounds of severe financial hardship with the rules under which superannuation assets will be assessed under the means test from 20 September. The intention there is to avoid the situation where a person's income support payment is reduced under these new means test rules, and they cannot access their superannuation to compensate for any loss of income support.

Senator SHERRY—Does this press release take into account the new hardship provisions we are considering here?

Mr Rojahn—I believe that is a direct reference to what we have just been discussing.

Mr Larkin—The rule for a person aged 55 is that, if they have been on Commonwealth income support benefits for a cumulative period of nine months, then they will be able to access their superannuation under these hardship rules. The test for the application of the means test is nine months cumulative on income support payments.

Mr Rojahn—That is correct.

Mr Larkin—So they are completely consistent.

CHAIR—We have a concern about advisers telling people to stay on the one income support for at least 52 weeks, because it would be possible for a person to be on a low income for a short time and not to have been continuously receiving Commonwealth income support payment for 52 weeks. So if you are only going to get a job for three weeks of your 52, then your financial adviser would say, 'Keep off it because you will be able to get a bigger benefit in terms of being able to access your superannuation.' Short-term employment opportunities would be turned down because there would be a gap in the payments. Also, we understand that as a person changes from one benefit to another, that is also a reason for a gap in the 52 weeks. Why is that, if you are still on the support but you change from one benefit to another?

Mr Rojahn—I can comment on the second point first. That is in fact not the case.

CHAIR—It is not the case?

Mr Rojahn—If a person transfers from, say, newstart allowance to sickness allowance, that does not interrupt the continuity of the 52-week period.

CHAIR—What of the cases under Social Security where it would be regarded as an interruption?

Mr Rojahn—If you are no longer receiving one of the relevant payments, which are all the major pension and allowance type payments, then that would constitute an interruption.

CHAIR—Thank you. That is useful. Senator Sherry, any further questions?

Senator SHERRY—Since the new regulations were announced, what has occurred with the flow of requests in respect of hardship to the ISC? Has it declined?

Mr Brown—Yes, it has declined quite substantially. We are still getting significant numbers of phone inquiries in our state offices, simply as the information about the change is filtering out into the community. In terms of applications we have received—because of course we are only now accepting them on compassionate grounds—we have received a total of 528, which is very significantly higher than the number of applications on compassionate grounds that we had received previously. But that is as you would expect it.

It would seem that a fair proportion of those are people trying their luck, because so far, out of about 220 that have been determined, only 69 of those applications, or 31 per cent, have actually been approved, and the others simply did not meet the criteria.

Senator SHERRY—I have had a number of people contact me who have spoken to their fund or life company and who have actually wanted to apply on the hardship grounds to obtain the form, but their fund has said, ‘Look, it is now law, you cannot apply, so we are not providing you with the form.’ Do you think that is reasonable, given that these regulations are subject to disallowance and that the law may change?

Mr Brown—In fact there is nothing to stop people from applying, although we would commend that they basically self-assess in the first instance. I know that we were discussing—

Senator SHERRY—But they are being discouraged from applying; that is my point.

Mr Brown—That would be a matter of the practice of the fund or life company in question. We have certainly done nothing to inhibit people from applying. I am not sure off the top of my head whether it has actually happened yet, but I know that we have discussed putting the application form up on our Internet Web site. That is not consistent with discouraging people from applying.

Senator SHERRY—I am not suggesting you have, but I have had a number of

complaints about funds and life companies saying to individuals, 'You cannot get money under hardship any more, there are new rules that apply, you do not meet the requirements.' Is it reasonable to give out that position, given that the regulations are not finalised yet?

Mr Larkin—I think from a strictly legal point of view it is. While the Senate ultimately has the prerogative of disallowing the regulations, the Acts Interpretation Act provides that regulations commence formally on gazettal. These regulations have been gazetted and so they are formally on foot. From a strictly legal point of view, they are justified in taking the course of action that they have. That is the kind of self-selection that we would hope, assuming the regulations do remain on foot, would take place in the system.

Senator SHERRY—I am sure that they would not be saying to the applicants, 'These regulations may be disallowed and, as a consequence, varied as a result of a Senate inquiry that is occurring or ultimately the debate that occurs in the Senate, if such a debate occurs.'

Mr Larkin—No, but I am just saying from a strictly legal point of view that they should not be under any obligation to do that because the regulations have been gazetted and so they are formally the law of the land until they—

CHAIR—We will have to get our report out fairly quickly.

Mr Larkin—If that consideration is important to you—

Senator SHERRY—My consideration, frankly, was the transition period and giving people a reasonable period of time in which to know of these changes and get their affairs in order. But many of them have not bothered to apply, because they have been told they should not apply because they cannot apply. I think the advice that some of the companies and funds have given in the current circumstances is unreasonable.

CHAIR—In relation to compassionate grounds, is there any residual discretion in relation to compassion or hardship?

Mr Brown—No.

CHAIR—None at all? So there is no right to feel—

Mr Brown—Only the right of internal review that I mentioned earlier.

CHAIR—In relation to the Social Security dependants, it is obvious that the problem area is Australian residents who could return to Australia. I must say there is quite compelling evidence that some of the target groups could well be misplaced in

relation to expatriates, in relation to 457-type visas. Are there any concluding comments?

Mr Larkin—Not on that particular point, but just on a point that was made earlier I wonder whether the concern about financial counsellors advising DSS clients to stay on benefits, rather than take part-time work, which would interrupt their contributions, is perhaps overstated.

CHAIR—The work test?

Mr Larkin—The work test. There would be various motivational factors to take into account. It would very much depend on the individual as to whether they wanted to enter the work force and get a start, or whether they thought their superannuation benefit was so valuable that they needed to get access to that. I just thought I would make that comment.

CHAIR—Thank you all very much for your contributions. It has been a very interesting hearing.

Committee adjourned at 11.17 a.m.