

## **Tax and Superannuation Laws Amendment (2014 Measures No. 1) Bill 2014**

*Portfolio: Treasury*

*Introduced: House of Representatives, 26 February 2014*

### **Purpose**

2.61 Tax and Superannuation Laws Amendment (2014 Measures No. 1) Bill 2014 sought to amend various taxation and superannuation laws.

2.62 Schedule 1 to the bill introduced penalties to deter and penalise persons who promote the illegal early release of superannuation benefits.

2.63 Schedule 2 to the bill introduced administrative directions and penalties for contraventions relating to self-managed superannuation funds (SMSFs) including rectification directions; education directions; and administrative penalties.

2.64 Schedule 3 to the bill sought to amend the *Income Tax Assessment Act 1936* to phase-out the net medical expenses tax offset by the end of the 2018-19 income year. During the income years 2013-14 to 2018-19 the tax offset will be subject to transitional arrangements.

2.65 Schedule 4 to the bill sought to amend the *Income Tax Assessment Act 1997* to update the list of specifically-listed deductible gift recipients.

### **Background**

2.66 The committee reported on the bill in its *Third Report of the 44th Parliament*.

2.67 The bill was subsequently passed by the Parliament and received Royal Assent on 18 March 2014.

### **Committee view on compatibility**

#### ***Right to fair trial and fair hearing rights***

##### *Civil penalty provisions*

2.68 The committee sought clarification from the Treasurer as to why a maximum penalty of \$340 000 for an individual is considered to be appropriate in these circumstances, and if not, whether sufficient provision has been made to guarantee compliance with the relevant criminal process rights provided for under the International Covenant on Civil and Political Rights (ICCPR), in particular the right to be presumed innocent, the right not to incriminate oneself and the prohibition against double jeopardy.

### **Parliamentary Secretary's response**

All members who contribute to superannuation receive the same substantial tax concessions, which are provided to encourage individuals to save for their retirement. Whilst the structure of funds within the

industry differs, there is no maximum amount that an individual may accumulate within their superannuation account and therefore the amount of benefit they may receive from these generous tax concessions.

Specifically, in relation to the measure in Schedule 1 to the Bill, the maximum penalty of \$340,000 is considered appropriate to provide sufficient deterrence to promoters involved in schemes aimed at facilitating the illegal early release of several million dollars and targeting many members.

As noted in the statement of compatibility, a court will determine the appropriate amount of any monetary penalty, taking into account the facts and circumstances of the case, which will include the size of the superannuation fund, the value of the assets involved and the severity of the contravention. Further information is provided in the statement of compatibility.<sup>1</sup>

## **Committee response**

**2.69 The committee thanks the Parliamentary Secretary to the Treasurer for his response and has concluded its examination of this matter.**

### ***Right to health***

#### ***Phase-out of the net medical expenses tax offset***

2.70 The committee sought an explanation from the Treasurer as to whether any limitations on the right to health that may result from the phasing out of the NMETO are reasonable and proportionate to the achievement of the government's fiscal priorities.

## **Parliamentary Secretary's response**

The NMETO has a number of shortcomings. First, it does not provide financial assistance when the medical expense is incurred, therefore it does not necessarily make the treatment more affordable for individuals on low incomes. Secondly, only taxpayers who have a tax liability receive a benefit from the offset, therefore individuals on low incomes with no tax liability do not benefit from the offset, which undermines the principle of equity.

The phase-out and eventual repeal of this offset is aimed at the objective of allowing for more effective, alternative mechanisms and further funding of Government priorities, including health care. The Government has determined that directing funding to health care through the indirect

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1 See Appendix 2, Letter from The Hon Steven Ciobo MP, Parliamentary Secretary to the Treasurer, to Senator Dean Smith, 28 April 2014, p. 1.

method of the NMETO and the tax system is not the most effective way of supporting the objective of funding Australia's health care system.<sup>2</sup>

### **Committee response**

**2.71 The committee thanks the Parliamentary Secretary to the Treasurer for his response and has concluded its examination of this matter.**

#### ***Rights of persons with disabilities***

##### ***Phase-out of the net medical expenses tax offset***

2.72 The committee sought clarification from the Treasurer as to whether the repeal of the NMETO is consistent with the rights of persons with disabilities, including whether the National Disability Insurance Scheme and other relevant supports will adequately compensate for any gap left by its abolition.

### **Parliamentary Secretary's response**

The NDIS is expected to cover all related expenses previously covered by the NMETO for those eligible for a funded plan from the NDIS and is consistent with the rights of persons with disabilities.<sup>3</sup>

### **Committee response**

**2.73 The committee thanks the Parliamentary Secretary to the Treasurer for his response and has concluded its examination of this matter.**

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2 See Appendix 2, Letter from The Hon Steven Ciobo MP, Parliamentary Secretary to the Treasurer, to Senator Dean Smith, 28 April 2014, p. 2.

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