



The Hon Amanda Rishworth MP

Minister for Social Services

Ref: MB24-000724

Senator Dean Smith
Chair
Senate Scrutiny of Bills Committee
Parliament House
CANBERRA ACT 2600

Dear Senator Smith

I refer to correspondence of 12 September 2024 regarding the Senate Standing Committee for the Scrutiny of Bills's request for information on matters identified in *Scrutiny Digest 11 of 2024* in relation to the Paid Parental Leave Amendment (Adding Superannuation for a More Secure Retirement) Bill 2024 (the Bill).

Automated decision-making

The Committee has requested my advice in relation to a provision allowing the Commissioner of Taxation (the Commissioner) to arrange for the use of computer programs for any purposes for which the Commissioner may make decisions under Chapter 3A of the Bill. This provision would allow the Commissioner to process applications in respect of a person's Paid Parental Leave (PPL) Superannuation Contribution entitlement efficiently.

As noted in the Explanatory Memorandum to the Bill, the Commissioner's core functions in proposed Chapter 3A of the Act are non-discretionary and would require the Commissioner to perform mechanical tasks such as calculating a person's PPL Superannuation Contribution using objective inputs such as Parental Leave Pay amounts received for the relevant income year, and the relevant Superannuation Guarantee charge percentage.

The Bill would, however, confer some discretionary functions on the Commissioner, such as proposed subsection 115P(5) of the Act, which would allow the Commissioner to revoke an overpayment recovery notice if satisfied it is appropriate in the circumstances to do so.

In response to the question on the Paid Parental Leave Rules 2021, I can confirm that the Rules do not confer any functions on the Commissioner, though amendments to the Rules may be required if the Bill is passed.

Proposed section 115ZD of the Act would only be relied upon where lawful to do so. For instance, computer programs would not be used to the extent this would unlawfully fetter the discretion afforded by statute. Furthermore, any computer programs used pursuant to proposed section 115ZD would be designed in accordance with Government policy and with the guidance of the Commonwealth Ombudsman's *Automated Decision-making Better Practice Guide*.

The Australian Taxation Office currently has a range of internal assurance mechanisms to ensure that any computer programs used in decision-making continue to operate lawfully, appropriately and effectively.

Having regard to the largely mechanical and non-discretionary nature of the Commissioner's functions under new Chapter 3A, it was considered unnecessary to incorporate specific automation assurance arrangements which would only be applicable to the administration of the PPL Superannuation Contribution. This is particularly so because it would make the administration of the new arrangements inconsistent with the Commissioner's administration of superannuation generally.

Moreover, any further assurance mechanisms should be designed within the broader context of the legislation so they operate across the superannuation scheme as a whole. Given the robustness of the ATO's existing oversight and assurance mechanisms and the importance of not establishing a new, bespoke superannuation framework for the PPL Superannuation Contribution, additional statutory safeguards recommended by AGD during consultation on these amendments were not pursued.

Reversing the evidential burden of proof

The Committee also raised concerns about proposed paragraph 115S(4)(a) of the Act. While this is structured as a defence, it is unlikely in practice action would commence against a superannuation provider in relation to a failure to adhere to proposed subsection 115S(2) or (3) if the Commissioner had exempted them from these requirements (since this information would either be known to the Commonwealth, or able to be ascertained, prior to action being initiated).

Should a proceeding nevertheless occur despite the superannuation provider having been notified (for example, due to an error in internal administrative systems), proposed paragraph 115S(4)(a) provides a safeguard by enabling the superannuation provider to raise a defence. In such circumstances, a notification from the Commissioner would be knowledge peculiar to the superannuation provider.

It would also be significantly more difficult and costly for the prosecution to disprove, than for superannuation providers to establish, that such a notification has been provided by the Commissioner.

Finally, as noted in the Explanatory Memorandum, the Bill's amendments, including proposed section 115S, are intended to broadly align with existing practices under the superannuation and taxation legislation, particularly the *Superannuation (Government Co-Contribution for Low Income Earners) Act 2003* (SGCC Act). This is important to ensure there is administrative and regulatory consistency for the Commissioner and superannuation providers. In this context, it is noted that the structure of proposed section 115S of the Act is identical to the corresponding requirements in section 32 of the SGCC Act.

I trust the information provided will be of assistance to the Committee. An Addendum to the Explanatory Memorandum for the Bill has been prepared to include the information provided in this response.

Yours sincerely

Amanda Rishworth MP

17 / 09 / 2024