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Introduction

Referral of the Bill

1.1 On 21 March 2013 the House of Representatives Selection Committee referred the Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013 (the Bill) to the House of Representatives Standing Committee on Economics (the committee) for inquiry and report.

1.2 The Bill amends various tax and superannuation laws. It contains eight schedules, which broadly:

- define a 'documentary' in the *Income Tax Assessment Act 1997* (ITAA 1997) for the purpose of accessing film tax offsets, and makes explicit that game shows are not eligible programs for film tax offsets (Schedule 1);
- exempt from income tax the ex-gratia payments made to people affected by natural disasters in Australia during 2011-12 and 2012-13 (Schedule 2);
- amend the goods and services tax (GST) law to enable eligible businesses to continue to pay their GST instalments if they subsequently move into a net refund position. This will enable businesses to continue to make their Business Activity Statements annually (Schedule 3);
- update the list of deductible gift recipients, adding six entities (Schedule 4);
- provide for procedures to consolidate accounts where a member of a superannuation fund may have multiple accounts within that fund (Schedule 5);

- make changes to the government superannuation co-contribution for low income earners (Schedule 6);
- consolidate eight existing dependency tax offsets into a single tax offset that is only available to taxpayers who maintain a dependant who is unable to work due to invalidity or carer obligations (Schedule 7); and
- clarify and refine the operation of certain aspects of the Taxation and Financial Arrangements (TOFA) regime, lowering compliance costs and proving additional certainty to affected taxpayers (Schedule 8).

1.3 In referring the Bill, the Selection Committee set out the following reasons for referral and principal issues for consideration:

> Further scrutiny and road-testing is required, particularly in relation to the following schedules:
>
> - Schedule 1 – after the two key changes proposed here, whether the film tax offset provisions remain properly targeted and consistent with policy intent;
> - Schedule 5 – whether the enforced consolidation of multiple member accounts with certain super funds will be done efficiently, effectively, and in the best interests of members, without unnecessary costs or unintended consequences;
> - Schedule 6 – proposed reductions in superannuation co-contributions for low income earners, including the freezing of the thresholds at which these co-contributions will begin phasing out (and end phasing out), are politically controversial, and where we have come from regarding co-contributions need ventilating;
> - Schedule 7 – consolidation of eight separate tax offsets for dependents into one new tax offset from 1 July 2012 is controversial and may have unintended consequences; and
> - Schedule 8 – complex matters regarding Taxation of Financial Arrangements (TOFA) regime, and changes apply retrospectively.
>
> Key concerns here generally involve:
>
> - Whether legislative changes are hitting the mark in terms of policy intent and efficacy;
> - Potential unintended consequences;
> - Many complex subject matters exist here;
> - Some parts apply retrospectively and may not be entirely beneficial to taxpayers; and
> - Some parts are quite controversial (for other reasons).[1]

1 House of Representatives Selection Committee, *Report No. 78: Private Members' business and referral of bills to committees*, 21 March 2013, p. 4.

Schedule 1—Definition of a documentary

Background

1.4 Schedule 1 amends the film tax offset provisions of the ITAA 1997. The schedule inserts the definition of a 'documentary' and includes 'game shows' on the list of formats that are ineligible for the film tax offset. Presently, the law does not provide a definition of what constitutes a 'documentary'.[2]

1.5 There are three tax offsets to encourage investment in Australian film production. Documentaries are generally not eligible for the 'location' or 'post, digital and visual' offsets. The Producer Offset is available for documentaries. This offset provides film makers who satisfy a number of criteria with a refundable tax offset of 40 per cent on feature films and 20 per cent on other films of their 'qualifying Australian production expenditure' (QAPE).[3]

1.6 The QAPE threshold for a documentary series is lower than for other program formats. A documentary has a QAPE threshold of $500,000, with a minimum of $250,000 per film hour, as compared to a drama series which requires a QAPE of at least $1 million, as well as a minimum of $500,000 per film hour. News and current affairs programs, films for exhibition as advertising and light entertainment programs are excluded formats for the purposes of the Producer Offset.[4]

1.7 Screen Australia is the film authority that administers the Producer Offset, which involves assessing whether a film satisfies the criteria set out in Division 376–65 of the ITAA 1997. This includes determining whether a film is a 'documentary' and calculating a film's level of QAPE. Since 2007 Screen Australia has used the definition from the Australian Communication and Media Authority's (ACMA) Guidelines. In its role as administrator of the Producer Offset, Screen Australia refused to certify a television program, *Lush House*, determining it to be an infotainment program, not a documentary. However, in 2011 the Administrative Appeals Tribunal (AAT) developed a different definition and ruled that the television program *Lush House* was a documentary that qualified for the Producer Offset.[5]

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2 Explanatory Memorandum (EM), Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 20.

3 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 11.

4 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, pp. 11-12.

5 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 20.

1.8 The changes in this schedule were announced in the 2012-13 Budget. In a joint media release on 5 July 2012, the Assistant Treasurer and the Minister for the Arts, issued further advice about the Government's intention to update the legislation governing the producer tax offset, indicating that 'recent court decisions have led to some uncertainty for screen producers about whether or not their production will qualify' for the Producer Offset. The then Minister for the Arts, the Hon Simon Crean MP, stated:

> Inserting a definition of the term 'documentary' will give producers greater confidence about the eligibility of their production and will support the success of the Producer Offset as a funding mechanism …
>
> It will also provide clear guidance for the program's administrator Screen Australia and the Government in the operation of the Offset.[6]

1.9 The Treasury released draft legislation and explanatory material on the changes in Schedule 1 on 14 December 2012, calling for submissions on the proposed changes. It received 10 submissions, including two confidential submissions. The public submissions are available on the Treasury's website.[7]

The new law

1.10 Schedule 1 will insert the ACMA's Guidelines definition of a documentary into the ITAA 1997 (Section 376-25):

Meaning of documentary

(1) A *film is a ***documentary*** if the film is a creative treatment of actuality, having regard to:

(a) the extent and purpose of any contrived situation featured in the film; and

(b) the extent to which the film explores an idea or a theme; and

(c) the extent to which the film has an overall narrative structure; and

(d) any other relevant matters.

Exclusion of infotainment or lifestyle programs and magazine programs

(2) However, a *film is not a ***documentary*** if it is:

(a) an infotainment or lifestyle program (within the meaning of Schedule 6 to the *Broadcasting Services Act 1992*); or

6 The Hon David Bradbury MP, Assistant Treasurer, and the Hon Simon Crean MP, Minister for the Arts, *Clarity for Producer Offset documentaries*, Joint Media Release No. 63, 5 July 2012.

7 The Treasury, Consultations and Submissions, *Film tax offsets –Definition of a 'documentary'*, <http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/Film-tax-offsets--definition-of-a-documentary>, viewed 2 April 2013.

(b) a film that:
   (i) presents factual information; and
   (ii) has 2 or more discrete parts, each dealing with a different subject or a different aspect of the same subject; and
   (iii) does not contain an over-arching narrative structure or thesis.

1.11 The amendments will apply retrospectively to films that commence principal photography on, or after, 1 July 2012.[8] From 1 July 2012 Screen Australia advised applicants for the Producer Offset of both the AAT and ACMA's definitions of what constituted a documentary.[9] Consequently, the EM stated:

> It follows that film makers would have embarked on making their films fully aware of the amendments that were proposed and of the consequences of those amendments for their film.[10]

1.12 The second change made in Schedule 1 is to add 'game shows' to the list of formats that are ineligible for the tax offsets.[11] These amendments are in line with the original policy intent to exclude 'light entertainment programs' from receiving tax offsets.[12] The amendments apply to films that start their principal photography on, or after, the Bill receives Royal Assent.[13]

1.13 The EM stated that there will be no revenue impact, and that the compliance cost impact will be low.[14]

Schedule 2—Ex-gratia payments for natural disasters

Background

1.14 Schedule 2 amends the ITAA 1997 to exempt from income tax the Disaster Income Recovery Subsidy (DIRS) and the ex-gratia Australian Government Disaster Recovery Payment made to New Zealand citizens holding non-protected special category visas.

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8 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 19.
9 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 19.
10 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 19.
11 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 19.
12 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 18.
13 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 21.
14 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 3.

1.15 The Australian Government Disaster Recovery Payment is a one off payment of $1,000 for eligible adults and $400 for eligible children adversely affected by a major or widespread disaster. The payment is tax exempt. New Zealand citizens holding non-protected special category visas (subclass 444) who arrived in Australia after 2001 are not eligible for the payment. However, the Government deemed that the hardship caused by specific natural disasters occurring between 2012 and 2013, warrants extending the payment to New Zealand non-protected special category visa holders. Included were those affected by the 2012 floods in New South Wales, Queensland and Victoria; the 2013 floods in New South Wales and Queensland; and the 2013 bushfires in Tasmania.[15]

1.16 The DIRS provides financial assistance to employees, small business persons and farmers that have lost their income as a result of a natural disaster.[16] In February 2013 the Prime Minister announced that the DIRS would be made available to people who had lost income as a result of ex-Tropical Cyclone Oswald and associated flooding in specified government areas.[17] New Zealand non-protected special category visa holders are eligible to apply for this payment.

The new law

1.17 Schedule 2 of the Bill amends the ITAA 1997 to ensure that Australian Government Disaster Recovery Payments to New Zealand citizens holding non-protected special category visas are tax exempt. This is consistent with the tax treatment of the payment to other eligible recipients. It will also make amendments to ensure that the DIRS is tax exempt. In the second reading speech, the Assistant Treasurer commented:

> Exempting these payments from tax maximises the value of the payments for people affected by recent disasters. It also ensures that the payments are treated in the same way as previous disaster assistance payments, such as those made in the wake of cyclone Yasi in 2011.[18]

1.18 Item 1 of Schedule 2 updates the table in Section 11-15 of the ITAA, which provides for income tax exemptions for certain payments. Specific references to New Zealand non-protected special category visa holders for a disaster in the 2010-11 financial year, the floods in NSW and Queensland

15 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, pp. 23-24.

16 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 24.

17 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 24.

18 The Hon David Bradbury MP, Assistant Treasurer, *House of Representatives Hansard*, 20 March 2013, p. 17.

in 2012, and the 2010 floods and Cyclone Yasi, are replaced with a more general reference to disaster assistance for this category of visa holders, and a reference to the Disaster Income Recovery Subsidy.

1.19 Division 51 of the ITAA 1997 includes a list of welfare payments that are exempt from income tax. Item 2 amends table item 5.1C to exempt the ex-gratia payments to the New Zealand non-protected special category visa holders from income tax. The amendments also provide for the time period in which the payment must be claimed, generally six months after the disaster has been declared.

1.20 Item 3 inserts a definition for the 'Emergency Management Minister' in Subsection 995-1(1) of the Dictionary of definitions in the ITAA 1997. The Attorney-General who administers the *Social Security Act 1991* will be responsible for announcing a disaster, which will be covered by the Australian Government Disaster Recovery Payment.

1.21 Items 4 and 5 of Schedule 2 amend the *Tax Laws Amendment (2011 Measures No. 1) Act 2011* and the *Tax Laws Amendment (2012 Measures No. 1) Act 2012*, respectively, to repeal sections of those Acts that are no longer necessary, following the amendments in this schedule to the ITAA 1997.

1.22 The remaining items 6 to 9 provide for sunset clauses to repeal these changes in 2016 and 2017. The EM outlined that:

> These amendments will be repealed on 1 July 2016 in the case of the tax exemption for the 2011-12 financial year, and on 1 July 2017 in the case of the 2012-13 tax exemption, by which time the amendments would have become inoperative.[19]

1.23 No revenue and compliance cost impact is anticipated. This measure applies to payments relating to disasters occurring in the 2011-12 and 2012-13 income years.[20]

19 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 26.

20 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 3.

Schedule 3—GST instalment system

Background

1.24 Schedule 3 amends *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) to allow entities that pay their GST by instalments, but subsequently move into a net refund position, the option to continue to use the GST instalment system.

1.25 Businesses use an activity statement to report and pay a number of tax obligations, including GST. For GST purposes, the business will use the Business Activity Statement (BAS) to report and pay the GST collected, and to claim GST credits. BAS can be undertaken on a monthly, quarterly or annual basis.

1.26 The GST instalment option allows eligible businesses to pay GST by quarterly instalments and to lodge an annual GST return in which it accounts for any difference between the actual GST liability and the total GST instalments paid for the year. This instalment option, introduced in 2001, aims to reduce reporting compliance costs by allowing annual rather than quarterly BAS.[21]

1.27 The changes in Schedule 3 were announced in the 2011-12 Budget, as part of the reforms to the GST instalment system. The Treasury has also consulted on this change, with a discussion paper released in June 2011. The Treasury stated that the original policy intent of this measure was refined following this consultation, stating:

> The original measure aimed to extend access to the instalment system to small businesses in a net refund position. Concerns were identified during the development of the legislation that the measure may present a revenue risk and conflict with other initiatives designed to target non-compliance in particular sectors of the economy. Consequently, the scope of the measure was limited, applying only to those entities that are already participating in the GST instalment system and subsequently move into a net refund position.[22]

1.28 Subsequently, draft legislation was released on 5 November 2012. One submission from the Tax Institute was received. No changes were made to the draft legislation as a result of the exposure draft consultation.

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21 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 29.

22 The Treasury, Summary of Consultation Process, *Allowing businesses in a net refund position to continue paying GST by instalments*, available at <http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/GST-instalment-system>, viewed 2 April 2013.

The new law

1.29 Currently, the GST Act prevents entities from paying GST by instalments if they move into a net refund position. The EM defined a 'net refund position' as:

> … one in which a business is entitled to receive more input tax credits on its acquisitions than it is required to pay GST on its sales and other supplies during the relevant tax period.[23]

1.30 Entities choosing to remain in the GST instalment system, that move to a net refund position, will have an instalment amount of zero, and not less.[24] This allows them to retain the compliance cost advantage of not having to complete a quarterly BAS. Entities that are not paying GST by instalments and are already in a net refund position remain ineligible to use the instalment option.[25]

1.31 The amendments made by Schedule 3 apply in relation to GST instalment quarters starting on, or after, the first 1 July that occurs on, or after, Royal Assent of this Bill.[26]

Schedule 4—Deductible gift receipts

Background

1.32 Division 30 of the ITAA 1997 contains a list of deductible gift recipients (DGRs). A DGR is an entity or fund that can receive tax deductible gifts of $2 or more. It can either be endorsed by the ATO or be listed in the tax law.[27] Having DGR status assists funds and entities to attract financial support for their activities, as donations will be tax deductible.

23 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, pp. 29-30.

24 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 31.

25 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 31.

26 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 32.

27 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 35.

The new law

1.33 Schedule 4 amends the ITAA 1997 to update the list of DGRs by adding the following six entities:

- The Conversation Trust—a charity that publishes analysis and commentary on current affairs from the university and research sector, written by experts and delivered directly to the public through its website, Twitter and Facebook (applicable to gifts made after 21 November 2012);
- National Congress of Australia's First Peoples Limited—a national representative organisation of Aboriginal and Torres Strait Islander peoples. It works for the recognition of Aboriginal and Torres Strait Islander rights, and towards securing a better economic, social, cultural and environmental future for these peoples (applicable to gifts made after 30 June 2013);
- National Boer War Memorial Association Incorporated—seeking donations to commemorate Australian service in the Boer War (1899 to 1902) by constructing a memorial on Anzac Parade in Canberra (applicable to gifts made after 31 December 2012 and before 1 January 2015);
- Anzac Centenary Public Fund—collecting donations to fund a range of Anzac Centenary initiatives and projects as agreed by Government, for the commemoration of the Anzac Centenary and Australia's involvement in World War One (1914 to 1918) (applicable to gifts made after 30 November 2012 and before 1 May 2019);
- Australian Peacekeeping Memorial Project Incorporated—seeking donations to build a memorial on Anzac Parade in Canberra, ACT to recognise the service of Australians who have served in peacekeeping missions (applicable to gifts made after 31 December 2012 and before 1 January 2015); and
- Philanthropy Australia Inc—a national membership body for the philanthropic sector, primarily servicing Australia's philanthropic trusts and foundations, and providing directory and information products on philanthropy (applicable to gifts made after 27 February 2013).[28]

28 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, pp. 5, 35-37.

1.34 These amendments will commence from Royal Assent. The Government's revenue projections from the measure are outlined in the table below:

Table 1.1 Financial impact of changing the DGR status of the six entities ($m)

Organisation	2012-13	2013-14	2014-15	2015-16
The Conversation Trust	0	-0.3	-0.5	-0.5
National Congress of Australia's First Peoples Limited	0	0	0*	-0.01
National Boer War Memorial Association Incorporated	0	-0.02	-0.05	-0.02
Anzac Centenary Public Fund	0	-1.3	-3.5	-2.3
Australian Peacekeeping Memorial Project Incorporated	0	-0.02	-0.04	-0.02
Philanthropy Australia Inc.	0	0*	-0.01	-0.01
Total ($m)	**0**	**-1.64**	**-4.10**	**-2.86**

Source *Explanatory Memorandum, p. 6.*
** Denotes that the financial impact has been rounded to zero*

1.35 The schedule also provides for the repeal of the time limited DGRs. Entries for National Boer War Memorial Association Incorporated and Australian Peacekeeping Memorial Project Incorporated will be repealed on 1 July 2019. The entry for the Anzac Centenary Public Fund will be repealed on 1 July 2023.[29]

Schedule 5—Merging multiple superannuation accounts

Background

1.36 On 21 September 2011, the then Minister for Financial Services and Superannuation, the Hon Bill Shorten MP, announced that as part of the Gillard Government's *Stronger Super* reforms, the Government 'will help superannuation funds and their members locate and consolidate multiple member accounts'.[30] The aim of the reform is to reduce the amount of fees paid on multiple accounts and maximise benefits for retirees.

1.37 The Treasury has conducted two consultations on intra-fund consolidation of superannuation interests, in March and August 2012.[31]

29 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 37.

30 The Hon Bill Shorten MP, Minister for Financial Services and Superannuation, *A better deal for superfund members*, Media Release No. 131, 21 September 2011.

31 The Treasury, Consultations and Submissions, *Intra fund consolidation of superannuation interests,* <http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/Intra-

The new law

1.38 Schedule 5 amends the *Superannuation Industry (Supervision) Act 1993* (SIS Act) to task trustees of particular superannuation funds with identifying if a member has multiple accounts within a fund and considering whether it is in the member's best interest to merge accounts.[32] This schedule aims to reduce the number of unnecessary multiple accounts within the same superannuation fund by merging these accounts. This will reduce the amount affected members pay in multiple sets of administration fees and insurance premiums, and consequently increase retirement savings.[33] In the second reading speech, the Assistant Treasurer stated:

> At June 2012 there were almost 32 million superannuation accounts in Australia—almost three accounts for every worker. This measure will facilitate a steady reduction in the number of unnecessary accounts in the superannuation system.[34]

1.39 These amendments apply to trustees of Australian Prudential Regulation Authority regulated superannuation funds and approved deposit funds.[35] According to the EM, the amendments will require affected trustees to:

- establish rules setting out how they will find multiple accounts held by one member within their fund;
- search for multiple accounts at least once per financial year;
- merge the member's multiple accounts (except in the case of defined benefit and income stream accounts) where the trustee reasonably believes it would be in the member's best interest, regardless of the balances of the accounts; and
- ensure no fees are payable (other than buy/sell spreads) for any mergers of multiple accounts.[36]

1.40 Proposed Section 108A(3) provides for a way in which accounts may be merged by introducing a definition of a 'superannuation account', which is to be used only in the context of these amendments:

> (3) A superannuation account is a record of the member's benefits, in relation to a superannuation entity in which the member has an interest, which is recorded separately:

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fund-consolidation-of-superannuation-interests> and <http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/Intra-fund-consolidation>, viewed 2 April 2013.

32 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, pp. 39, 41.

33 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 49.

34 The Hon David Bradbury MP, Assistant Treasurer, *House of Representatives Hansard*, 20 March 2013, pp. 17-18.

35 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, pp. 39, 48.

36 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 42.

> (a) from other benefits of the member in relation to the entity (if any); and
>
> (b) from other benefits of any other member in relation to the entity.
>
> To avoid doubt, an FHSA (within the meaning of the *First Home Saver Accounts Act 2008*) is not a superannuation account.

1.41 When considering whether it is a member's 'best interest' to merge accounts, the EM stated:

> In general, multiple fees, charges and insurance may not be in the member's best interest, and one set of fees and charges may be more appropriate.[37]

1.42 The EM also specified that trustees will not be required to merge accounts 'where they consider it to be impracticable'.[38] Further, a number of accounts will be exempt from the consolidation measure, these include:

- benefit interest accounts;
- accounts supporting an income stream;
- First Home Saver Accounts;
- pooled superannuation trusts; and
- self-managed superannuation funds.[39]

1.43 Trustee will not require the consent of members prior to consolidating eligible accounts. However the EM outlined that:

- trustees can seek a member's view when dealing with large accounts;
- trustees must comply with the requirements of the Australian Securities and Investments Commission in relation to significant events; and
- trustees must consider their disclosure obligations in the *Corporations Act 2001* and the *Corporations Regulations 2001* when consolidating accounts.[40]

37 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 43.
38 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 44.
39 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 40.
40 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 46.

1.44 On the matter of 'disclosure' the EM stated:

> Where a trustee makes a decision that fundamentally affects a member's investment, including a decision to transfer a member's benefits without notice or consent, the trustee must disclose this change or event to the member either before, or as soon as practicable (but not more than three months) after the decision.[41]

1.45 Trustees will be expected to undertake possible consolidation duties on a 'periodic basis', which the EM outlined is to happen at least annually.[42]

1.46 The EM indicated that there will be no revenue impact of the Schedule 5 amendments, but that a moderate compliance cost impact is expected.[43] A regulation impact statement on the *Stronger Super* reforms is available from the Department of Finance and Deregulation website, with the consolidation of superannuation accounts discussed in Section 3 of that report. The EM noted that this change has been developed in consultation with industry.[44]

1.47 The EM noted that Schedule 5 raises some human rights issues, as it engages the right to privacy in Article 17 of the International Covenant on Civil and Political Rights. Under the proposed amendments, trustees will not be required to obtain a member's consent to merge multiple accounts in the same fund. However, the EM concluded that the schedule 'limits the right to privacy in a reasonable and proportionate way and is therefore compatible with human rights'.[45]

1.48 These amendments will commence from 1 July 2013, with a first round of consolidation to be undertaken by 30 June 2014.[46]

Schedule 6—Superannuation co-contributions

Background

1.49 Schedule 6 changes the superannuation co-contributions made by government. The superannuation co-contribution initiative involves the Government making co-contributions to help eligible low and middle income earners boost their super savings.

41 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 46.
42 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, pp. 39-41.
43 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 41.
44 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 40.
45 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 50.
46 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, pp. 40, 47.

1.50 Under the scheme, the Government would match up to $1,000 for individuals who fall within certain income thresholds. There are two applicable income thresholds (from 1 July 2009 to 30 June 2012), the lower income threshold ($31, 920), and the higher income threshold ($61,920). The maximum entitlement is $1,000, which is then reduced by 3.333 cents for every dollar of total income—less any allowable business deductions—is over $31,920, up to $61,920.[47]

1.51 The lower income threshold is indexed, but has been frozen at $31,920 for the 2010-11 and 2011-12 income years. In the 2011-12 Budget, the Government announced a measure for an additional one year freeze on the indexation of the lower income threshold, extending the freeze to 2012-13. In the 2011-12 Mid-Year Economic and Fiscal Outlook the Government also announced further changes to superannuation government co-contribution arrangements.[48]

The new law

1.52 Schedule 6 amends the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* by:

- reducing the rate of payment for the superannuation co-contribution from 100 per cent to 50 per cent;
- decreasing the maximum amount payable from $1,000 to $500;
- extending the freeze on the indexation of the lower income threshold for the 2012-13 income year; and
- setting the higher income threshold at $15,000 above the lower income threshold (down from $30,000).[49]

1.53 In the second reading speech, the Assistant Treasurer explained that:

> Schedule 6 will reduce the matching rate and maximum payment of the voluntary superannuation co-contribution from 1 July 2012 … These changes mean that for the co-contribution, the government will contribute 50c for every dollar of eligible personal contributions an individual makes up to a maximum of $500.[50]

47 Australian Taxation Office, *Super co-contribution*, available at <http://www.ato.gov.au/individuals/content.aspx?menuid=0&doc=/content/42616.htm&page=3&H3>, viewed 2 April 2013.

48 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 8.

49 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 51.

50 The Hon David Bradbury MP, Assistant Treasurer, *House of Representatives Hansard*, 20 March 2013, p. 18.

1.54 The amendments in the schedule freeze the lower income threshold of $31,920 for the 2012-13 income year. However, the Assistant Treasurer outlined in his second reading speech that there will be a change to the higher income threshold:

> The income threshold above which no co-contribution is payable [currently $61,920] will be reduced to $15,000 above the lower income threshold, that is, $46,920 for the 2012-13 income year.[51]

1.55 The EM stated that only 20 per cent of eligible people currently take advantage of the scheme.[52] The low income superannuation contribution (LISC) is put forward as a more accessible scheme for low income earners:

> The LISC is a better targeted payment, covering over an estimated five times as many individuals as the superannuation co-contribution as a result of these amendments. It also does not require that low income individuals make eligible personal superannuation contributions to their superannuation fund, which increases the coverage of assistance available to low income earners.[53]

1.56 The EM outlined the implications for the underlying cash balance over the forward estimates as follows:

Table 1.2 Revenue impact of Schedule 6 ($m)

Year	2012-13	2013-14	2014-15	2015-16
Amount	0	325	335	327

Source *Explanatory Memorandum, p. 8.*

1.57 These amendments will commence from the date of Royal Assent and apply from the 2012-13 income year.[54]

51 The Hon David Bradbury MP, Assistant Treasurer, *House of Representatives Hansard*, 20 March 2013, p. 18.

52 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 52.

53 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 52.

54 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 8.

Schedule 7—Consolidating dependency tax offsets

Background

1.58 The *Income Tax Assessment Act 1936* (ITAA 1936) provides for dependency tax offsets for taxpayers who maintain certain classes of dependants. The Government announced in the 2012-13 Budget that it would consolidate eight existing dependency tax offsets into a single offset that is only available to taxpayers who maintain a dependant who is unable to work due to invalidity or care obligations.[55] Treasury undertook a public consultation on the provisions of Schedule 7.[56]

The new law

1.59 Schedule 7 consolidates eight separate tax offsets for dependants into one new tax offset from 1 July 2012. The eight tax offsets to be consolidated are: the carer spouse, invalid spouse, invalid relative, parent/parent-in-law, child-housekeeper, child-housekeeper (with child), housekeeper and housekeeper (with child) tax offsets.[57]

1.60 Specifically, Schedule 7 of the Bill amends:

- the ITAA 1997 to create a new, consolidated dependency tax offset for taxpayers maintaining certain classes of dependants who are genuinely unable to work;
- the ITAA 1936 to preserve the existing dependency tax offsets for taxpayers eligible for the zone, overseas forces and overseas civilian tax offsets; and
- the ITAA 1936 to reflect the impact of the consolidation of the dependency tax offsets on the net medical expenses tax offset.[58]

55 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 57.

56 The Treasury, Consultations and Submissions, *The dependant (invalid and carer) tax offset,* <http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2013/Dependant-Invalid-and-Carer-Tax-Offset>, viewed 2 April 2013.

57 The Hon David Bradbury MP, Assistant Treasurer, *House of Representatives Hansard*, 20 March 2013, p. 18.

58 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 57.

1.61 In the second reading speech, the Assistant Treasurer commented in relation to Schedule 7 that 'this reform is consistent with the Australian Future Tax System Review and builds on the government's record of tax reform'. The Assistant Treasurer explained:

> The new tax offset will be called the dependant (invalid and carer) tax offset. It will be paid at the highest of the rates of the consolidated tax offsets. The offset will be limited to taxpayers who contribute to the maintenance of a dependant who is genuinely unable to work because of invalidity or carer obligations.[59]

1.62 The EM defined an eligible dependant as:

- a taxpayer's spouse, parent, child (aged 16 years or over), brother or sister (aged 16 years or over) who is genuinely unable to work due to invalidity;
- the taxpayer's spouse's parent, brother or sister (aged 16 years or over), who is genuinely unable to work due to invalidity; or
- a taxpayer's spouse or parent/parent in law, who is genuinely unable to work due to carer obligations.[60]

1.63 The EM further stipulated that under the amendments in Schedule 7:

> A dependant is considered to be genuinely unable to work due to invalidity where that person receives: a disability support pension or a special needs disability support pension under the *Social Security Act 1991*; or an invalidity service pension under the *Veterans' Entitlements Act 1986*.[61]

1.64 The amendments in Schedule 7 will make the following key changes to the dependency tax offset arrangements:

- A taxpayer will no longer be able to receive a tax offset in respect of a child-housekeeper, child-housekeeper (with child), housekeeper or housekeeper (with child), as those dependants do not meet the requirement of being genuinely unable to work;
- The current maximum offset amount varies depending on the dependency offset the taxpayer is entitled to, with the new maximum amount set at $2,423 for 2012-13;

59 The Hon David Bradbury MP, Assistant Treasurer, *House of Representatives Hansard*, 20 March 2013, p. 18.

60 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 64.

61 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 64.

- A taxpayer will only be entitled to include as part of their net medical expenses tax offset (NMETO) claim the net medical expenses of a dependant who is a relative, spouse's relative, parent or spouse's parent who is genuinely unable to work due to invalidity or care obligations. The housekeeper and related categories will no longer be covered; and
- A taxpayer may be entitled to a concession for accessing the family Medicare levy low income threshold if they have a spouse or child. They are no longer entitled to access it if they contribute to the maintenance of a child housekeeper, or if they engage a housekeeper.[62]

1.65 Certain features of the current arrangements will continue to apply, in particular:

- A taxpayer who maintains a dependant who is eligible for the zone, overseas forces or overseas civilian tax offset will experience no changes to any of their offset and concession entitlements or amounts; and
- A taxpayer can still receive more than one amount of dependency tax offset, as long as it is in respect of a different dependant.[63]

1.66 The EM outlined the implications for the underlying cash balance over the forward estimates as follows:

Table 1.3 Revenue impact of Schedule 7 ($m)

Year	2012-13	2013-14	2014-15	2015-16
Amount	–2.9	24.9	24.9	20.0

Source *Explanatory Memorandum, p. 9.*

Schedule 8—Taxation of financial arrangements

Background

1.67 Schedule 8 amends Division 230 of the ITAA 1997 and the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* (TOFA Act) to clarify and refine the operation of certain aspects of the Taxation of Financial Arrangements (TOFA) regime.

1.68 TOFA reforms were first announced in 1992 and have involved the implementation of various stages of arrangements in the ensuing years. The TOFA arrangements aim to reduce the influence of tax considerations

62 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, pp. 62-63.

63 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, pp. 62-63.

on how financial arrangements are structured, emphasising other factors, such as risk, when making financing decisions.

1.69 The TOFA rules provide for the tax treatment of gains and losses on financial arrangements. The rules are contained in Division 230 of the ITAA 1997 and apply to those with large tax payment obligations. Division 230, representing stages three and four of the TOFA reforms, was introduced by the TOFA Act. The rules include methods for calculating gains and losses from financial arrangements, and the time at which these gains and losses will be brought to account.

1.70 The TOFA rules generally apply to financial arrangements for financial years commencing on or after 1 July 2010, unless the taxpayer elected to apply the TOFA provisions from the previous financial year. When introduced, the Government foreshadowed that monitoring and further legislative refinements would be required.

1.71 On 29 June 2010, the then Assistant Treasurer, Senator the Hon Nick Sherry, announced further refinements to the income tax law relating to the TOFA rules, outlining a number of proposed amendments to the ITAA 1997 and the TOFA Act.[64]

1.72 The Treasury has consulted with the ATO and industry as part of the TOFA Working Group consultation process, and on 10 January 2013 released exposure draft legislation and explanatory material for public consultation. The Treasury received six submissions, including three confidential submissions. The Government amended the draft Bill to address certain concerns raised during the consultation.[65]

The new law

1.73 The amendments in Schedule 8 will cover the following aspects of the TOFA regime:

- **core rules** cover the tax treatment of gains and losses from financial arrangements;
  - ⇒ the amendments will provide that taxpayers must have regard to financial benefits that they are both certain and *uncertain* of providing and receiving; and

64 Senator the Hon Nick Sherry, Assistant Treasurer, *New reforms to the Taxation of Financial Arrangements*, Media Release No. 145, 29 June 2010.

65 The Treasury, Summary of Consultation Process, *Amendments to the taxation of financial arrangements (TOFA) stages 3 & 4 provisions,* <http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2013/TOFA-Stages-3-and-4>, viewed 2 April 2013

- ⇒ financial benefits are generally not attributable to interest or interest-like amounts,[66] but can be in 'appropriate circumstances' (Part 1 of Schedule 8);

- **accruals and realisation tax timing methods**, which are the default methods of recognising gains and loses under the TOFA provisions;
  - ⇒ the amendments propose changes to how overall gains and losses interact with particular gains and losses (Part 2 of Schedule 8);
- **fair value tax timing method**, by which financial arrangements that are assets or liabilities are classified or designated as at fair value through profit or loss for accounting purposes;
  - ⇒ the amendments will clarify how TOFA deals with different types of fair value gains and losses recognised under accounting standards (Part 3 of Schedule 8);
- **hedging financial arrangements method**, under which taxpayers may use financial arrangements to hedge financial risks arising from the purchase, sale or production of commodities, and their financial assets or liabilities;
  - ⇒ the amendments will ensure that the hedging financial arrangements election is applied consistently, by removing the current possibility to ensure that an election does not apply to a particular hedge by failing to meet certain documentation requirements (Part 4 of Schedule 8);
- **transitional balancing adjustment provisions** provide for an adjustment to reconcile differences in tax treatments under other tax provisions when a taxpayer makes an election to bring their existing financial arrangements under the TOFA regime;
  - ⇒ the amendments will ensure that an alternative method can only be used if the amount of the balancing adjustment worked out under that method approximates the amount under the primary method (Part 5 of Schedule 8);
- taxpayers must meet eligibility requirements for making **certain elections** under the TOFA regime;
  - ⇒ the amendments will provide that to satisfy eligibility requirements foreign banks may use an audited Statement of Financial Position and Statement of Financial Performance to submit to the Australian Prudential Regulation Authority (Part 6 of Schedule 8); and

66 An amount is an interest-like amount if it represents a return paid or provided on a debt interest, is something in the nature of interest or is something that could reasonably be regarded as being a substitute for interest.

- miscellaneous amendments to ensure language is used consistently and to make minor drafting corrections (Part 7 of Schedule 8).

1.74 In the second reading speech, the Assistant Treasurer stated that the proposed amendments are 'the outcome of ongoing monitoring of the implementation of the taxation of financial arrangements regime, and were announced following extensive consultation with the Australian Taxation Office and industry'.[67]

1.75 The EM maintained that the amendments are 'generally beneficial to taxpayers'. The financial impact is described as 'unquantifiable but is not expected to be significant'. The EM stated that the amendments are expected to 'protect a significant amount of revenue which would otherwise be at risk'. It is anticipated that the compliance cost impact will be low.[68]

1.76 The Schedule 8 amendments will apply retrospectively from the commencement of the TOFA regime, to income years commencing on or after 1 July 2010, or from the previous income year, if taxpayers have elected to apply Division 230 earlier.

Objectives and scope of the inquiry

1.77 The objective of the inquiry is to investigate the adequacy of the Bill in achieving its policy objectives and, where possible, identify any unintended consequences.

Conduct of the inquiry

1.78 On 25 March 2013 the Chair issued a media release announcing the inquiry and calling for submissions, and details of the inquiry were placed on the committee's website.

1.79 The committee received 14 submissions, which are listed in Appendix A.

1.80 A public hearing was held in Canberra on Thursday, 18 April 2013. The list of the witnesses who appeared at the hearing is available in Appendix B. The submissions and transcript of evidence are available on the committee's website at http://www.aph.gov.au/economics.

67 The Hon David Bradbury MP, Assistant Treasurer, *House of Representatives Hansard*, 20 March 2013, p. 18.

68 EM, Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, p. 9.