



Supplementary Remarks –  
Mr Steven Ciobo MP, Deputy Chair,  
Ms Kelly O’Dwyer MP, Mr Scott Buchholz MP,  
Liberal Party of Australia

**Tax and Superannuation Laws Amendment (2012 Measures No. 1) Bill  
2012**

Liberal Members of the Committee agree with much of the analysis contained in the Report. However, these supplementary remarks provide greater detail regarding concerns held by Liberal Members with regard to the operation and impacts of the *Tax and Superannuation Laws Amendment (2012 Measures No. 1) Bill 2012*.

Liberal Members of the Committee do not believe the Bill should be opposed.

Supplementary comments from the Liberal Members are segregated by Schedule as per the Bill and confined to those schedules where we felt additional comments were warranted.

**Schedule Three – Indexation of the Concessional Superannuation  
Contributions Cap**

As outlined in paragraph 2.1 of the report, there is a “temporary pause” of indexation of the superannuation concessional contributions cap, so that the concessional contribution will be fixed at \$25,000 up to and including the 2013-14 financial year.

The Government and Treasury witnesses have outlined, and indeed the Labor Members of the Committee in the report make the point also at paragraph 2.13, that the rationale for this pause of indexation of the superannuation concessional

contributions cap is to improve fiscal position of the Government - in other words, to improve the Government's bottom line.

**Mr CIOBO:** Can I ask Treasury: what is the policy rationale for the pausing of the indexation?

**Ms Gabbitas:** There are two elements to the rationale. The main one is in a tight fiscal environment the government indicated that a one year pause in the caps is warranted, given the saving it makes to the bottom line.

The other rationale is that the caps in the current environment are quite generous. As an example, someone who is on what is termed the maximum contribution base, which is a high-income earner who is just getting the superannuation guarantee contribution has scope to contribute in addition to their superannuation guarantee of around \$9,000. Someone who is on a lower income level has scope to make significant voluntary salary sacrifice or other employer contributions and still fit within their cap. For the majority of people, the cap is more than they are able to, capable of or want to contribute to super, so I acknowledge there are a proportion who clearly would like to contribute more, but in general the cap accommodates the majority of people.

**Mr CIOBO:** When you say a tight fiscal environment, what do you mean exactly?

**Ms Gabbitas:** The government is committed to returning the budget to surplus in 12/13 and, as part of that, it has had to look across the board, not just at super, to find a range of savings to deliver that goal. It thought that pausing the indexation of the cap was reasonable in that environment.

Liberal Members note the measure serves to improve the Government's fiscal position for the one year through a revenue increase of around \$485 million.

**Mr CIOBO:** When you talk savings of \$485 million, do you mean increased taxation of \$485 million?

**Ms Gabbitas:** In one sense it is because super is concessional and effectively means that people will be paying more tax.

**Mr CIOBO:** Is the government collecting an extra \$485 million in tax as a consequence of this decision?

**Ms Gabbitas:** Yes.

**Mr CIOBO:** So the government is collecting an extra \$485 million because the budget has been in significant deficit...

**Mr CIOBO:** ...Is it possible then from a policy perspective that had we not seen, for example, \$1 billion of wasted expenditure on the BER and a \$1 billion on pink batts, it would not be necessary to have this extra \$485 million of tax on concessional superannuation? Are they the kind of trade-offs that we are talking about?

**Ms Gabbitas:** That is a matter beyond the scope of my area of expertise.

**Mr CIOBO:** Let me put it another way – if we had not had to spend \$1 billion extra on BER, would it be necessary to raise this \$485 million in extra tax? Presumably, we would be in credit of around \$515 million.

**Ms Gabbitas:** That is a matter for the government to make policy based on the fiscal environment it is in. As I said, it is beyond the scope of my expertise.

It is clear to Liberal Members of the Committee that this Labor initiative serves simply to boost the Government's fiscal position next year. It is raising an extra \$485 million of tax revenue.

The Government is sacrificing the ability of Australians to provide for their retirement in order to help improve the Government's fiscal position next year.

Furthermore, the second rationale cited by Government for the pause in the indexation of the concessional superannuation contributions cap, that is because the cap is considered to be "quite generous", is not a view shared by many stakeholders.

**Mr CIOBO:** Can I ask about the second aspect. You spoke about the current caps being, to use your words, 'quite generous.' I am just interested in getting some comments from the Institute of Chartered Accountants and CPA Australia. In particular I think you, Mr Davison, made comments that the caps are actually quite

low in comparison to where they initially started. I just wonder how we reconcile the views of CPA Australia and the Institute of Chartered Accountants with Treasury's comments that the caps are actually quite generous, because they seem to be coming at opposite ends of the spectrum. Have you got some comments on that?

**Mr Davison:** Only to say that we would disagree with that. We believe the current concessional caps compared to the previous contribution limits, that is pre *SimplerSuper*, are considerably lower. The cap in 2006-07 was a bit over \$100,000 for someone aged over 50. Now it seems to have been reduced to \$50,000 and it has not been indexed since it was introduced. In fact, it has been halved since it was introduced. We would argue that it is not generous at all. It has certainly gone backwards.

**Ms Westover:** I would disagree with Treasury's comments as well. I think that the thing you need to understand about contribution caps is that it is a 'use it or lose it' regime. People do not have the capacity to put extra amounts into superannuation for a long time in their working lives – they are raising families, paying off mortgages and that type of thing. So at the time when they are able to, they are usually on a higher income. The kids have left school and the mortgage is paid and they need to be able to catch up. That is why it is important that these concessional caps remain at a level at which they can catch up.

For the reasons outlined above, Liberal Members of the Committee do not agree with the views outlined in the report in paragraphs 2.12 and 2.13.

## Schedule Four – Excess Contributions Tax Refund

Liberal Members of the Committee considered the testimony of witnesses and the submissions in relation to Schedule Four to provide a comprehensive overview of the complexities and considerations in relation to excess contributions.

Indeed, analysis in the report succinctly outlines arguments surrounding the issue.

Nonetheless, it is our view the Government's rationale for the \$10,000 limit and the requirement that there is effectively only one opportunity to breach the cap without penalty remains opaque.

Stakeholders outlined a number of alternatives in submissions and their testimony of how best to tackle the 'problem' of excess contributions.

There were some concerns raised that Government was using the penalty as an opportunity to secure additional taxation revenue.

**Mr Davison:** Our understanding is that the excess contribution tax regime is there as a disincentive for people not to breach their caps, and people are inadvertently going to breach their caps. We should keep it as simple as possible to allow them, if they breach them, to make amends and get a refund or whatever to correct it. Having this measure where it is a one-off and then talking about having to introduce reporting and linking it to the individual to try and keep track of whether they have breached once or twice or whether they are going to breach et cetera is making it more complex. In many other regimes – even in the tax regime – if you pay the wrong tax amount or get your tax return wrong et cetera it is pretty simple to fix it. There are minor penalties. But you can correct it multiple times – it is not a once-off thing; it is not 'use it or lose it'. This is a bandaid, but it will alleviate a lot of problems with the current system. But our primary concern is that the one-off nature of it is adding more complexity. No matter how good the reporting is, people are still going to get things wrong. There is still going to be confusion. This will unnecessarily penalise people.

I want to pick up a point that Treasury made before when they talked about how there would be a fiscal impact if it was not a one-off thing. Given that this is supposed to be a disincentive, we are concerned that it appears to be becoming a revenue stream for the government. There should be no fiscal impact whether it is a once-off or multiple use thing. There was also the point about the tax position of an individual not being any different whether they breach it or not. Unfortunately, there is a flow-on effect if you breach your concessional cap and you happen to make non-concessional contributions up to the limit. The combined excess tax is actually 93 per cent, not the top marginal rate. As Ms Westover said, considering timing issues, you may have breached your cap once or twice before you find out about it and even if you get the refund once you may still be subject to a 93 per cent tax penalty for the subsequent breaches.

Additionally, Liberal Members noted stakeholder comments that subsequent breaches of the cap can be inadvertent and a consequence of reporting timeframes.

**Ms Westover:** I would to refute one of Treasury's comments about the timing of the rationale for this one-off refund. The reality is that most people will have breached a second time before they become aware of the first time, and that is due to the reporting mechanisms of contributions into superannuation. The second year has already passed by the time all of the information has accumulated, which could be from a variety of super funds and indeed that person becomes aware of a breach. So the notion of a one-off only being required is questionable.

## General Comments

Liberal Members of the Committee do not oppose passage of the Bill. However, witness testimony and submissions indicate the conclusions reached in the report at paragraphs 2.78, 2.79 and 2.85 do not accurately reflect the validity of concerns raised by stakeholders.

Further, the stated rationale of pausing indexation of the concessional superannuation contributions cap to 'improve the Government's fiscal position' neglects the obvious reality that had the Government not eroded the Commonwealth's fiscal position so extensively, there would not now be a need to raise an extra \$485 million of tax revenue to attempt to repair it.

Finally, there remains uncertainty surrounding the rationale for the selection of the \$10,000 threshold for the excess contributions tax refund, as well as why only a single error is permitted in contrast to, for example, an income tax assessment.

**Steven Ciobo MP**

**Deputy Chair**

**Kelly O'Dwyer MP**

**Scott Buchholz MP**