

The Senate

Economics Legislation Committee

Superannuation Budget Measures Bill 2004,
Superannuation Laws Amendment (2004
Measures No. 1) Bill 2004 and Superannuation
Laws Amendment (2004 Measures No. 2)
Bill 2004

June 2004

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Senate Economics Legislation Committee

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CHAPTER 1

INTRODUCTION

Background

1.1 The Superannuation Budget Measures Bill 2004 was introduced into the House of Representatives on 13 May 2004 by the Hon Peter Costello MP, Treasurer. It was passed by the House on 26 May 2004. The Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004 and the Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004 were introduced into the House of Representatives on 27 May 2004 by the Hon Ross Cameron MP, Parliamentary Secretary to the Treasurer, and passed on 2 June 2004. All three bills were introduced into the Senate on 15 June 2004.

Purpose of the bills

1.2 The bills implement measures announced in relation to superannuation in February 2004¹, March 2004,² and in the 2004-2005 Budget. In particular, the bills make changes to the superannuation co-contribution scheme; the superannuation surcharge rate; actuary certificate requirements for prescribed pension providers; work test requirements for under-18s; the superannuation guarantee earnings base arrangements; and the portability time frame applying to retirement savings account providers.

Reference of the bills

1.3 On 16 June 2004, the Senate adopted the Selection of Bills Committee Report No. 8 of 2004 and referred the bills to the Senate Economics Legislation Committee for consideration and report by 21 June 2004.

Submissions

1.4 The Committee advertised its inquiry into the bills on the internet and contacted a number of organisations alerting them to the inquiry and inviting them to make a submission. A list of submissions received appears at **Appendix 1**.

1 Press release, Treasurer of the Commonwealth of Australia, The Hon Peter Costello MP, *A more flexible and adaptable retirement income system*, 25 February 2004, viewed at: <http://www.treasurer.gov.au/tsr/content/pressreleases/2004/011.asp?pf=1>, on 17 June 2004.

2 Press release, Minister for Revenue and the Assistant, Senator The Hon Helen Coonan, *Matched super extended to one million more Australians*, 14 March 2004, viewed at: <http://assistant.treasurer.gov.au/atr/content/pressreleases/2004/013.asp?pf=1>, on 18 June 2004.

Hearings and evidence

1.5 The Committee held one public hearing at Parliament House, Canberra, on Friday, 18 June 2004.

1.6 Witnesses who appeared before the Committee at that hearing are listed in **Appendix 2**.

1.7 Copies of the Hansard transcript are tabled for the information of the Senate. They are also available through the internet at <http://aph.gov.au/hansard>.

Acknowledgment

1.8 The Committee wishes to thank all those who assisted with its inquiry, especially in the light of the very short time frames involved.

CHAPTER 2

THE BILLS

2.1 The main issues raised during the Committee's inquiry related to the expansion of the Government's superannuation co-contribution scheme, the reduction in the superannuation surcharge rate and the changes to the superannuation guarantee earnings base arrangements. This chapter considers these issues and, additionally, provides a brief overview of the other measures in the bills.

Superannuation Budget Measures Bill 2004

2.2 As outlined in the 2004-2005 Budget, the Superannuation Budget Measures Bill 2004 extends the Government superannuation co-contribution scheme and reduces the maximum superannuation contributions surcharge rates. The purpose of the bill is to improve retirement savings and superannuation incentives for low to middle income employees who make voluntary superannuation contributions.

Co-contribution scheme

2.3 Currently, the Government matches voluntary personal superannuation contributions made by qualifying employees, on a dollar for dollar basis up to a maximum Government contribution of \$1,000. This maximum contribution is available for qualifying employees on incomes (for co-contribution purposes) up to \$27,500. The maximum Government contribution phases out at a rate of 8 cents for every dollar of income above \$27,500. It phases out completely at \$40,000.¹

2.4 The bill increases the level of Government matching of personal superannuation contributions to \$1.50 for every dollar voluntarily contributed, increases the maximum amount of Government contribution available to \$1,500, increases the income level up to which the maximum co-contribution applies to \$28,000, and reduces the rate to 5 cents for every dollar of income above \$28,000 by which the maximum co-contribution phases out. It will phase out completely at \$58,000.²

2.5 The changes will take effect for the 2004-2005 and later income years.

2.6 The amendments are intended to increase the incentives for low to middle income employees to save for their retirement through the superannuation system. The Government anticipates that the amended co-contribution scheme will improve retirement savings for more than one million Australians.³ The cost of the measure is

1 Explanatory Memorandum, Superannuation Budget Measures Bill 2004, p.6.

2 Explanatory Memorandum, Superannuation Budget Measures Bill 2004, p.6.

3 Second reading speech, Superannuation Budget Measures Bill 2004.

expected to be \$595 million in 2005-2006, \$730 million in 2006-2007, and \$790 million in 2007-2008.⁴

Response of witnesses

2.7 Both the Investment and Financial Services Association (IFSA) and the Association of Superannuation Funds of Australia (ASFA) strongly support the extension of the co-contribution scheme. IFSA research suggests that around 40 per cent of eligible people would take advantage of a co-contribution program on the basis of 3 for 2 matching, as outlined in the bill.⁵ In its submission, IFSA stated that:

The data presented in this report suggest that Government co-contribution will be very successful in driving voluntary contributions to super.⁶

2.8 However, the Australian Council of Trade Unions (ACTU) expressed concern that both the co-contribution scheme as it currently exists, as well as its extension, will mostly benefit eligible employees who are members of families where a high income earner is in a position to assist with making the contributions, either directly or indirectly.⁷ The ACTU considers that the funds allocated to the scheme could be better used by reducing the tax on superannuation contributions paid by low paid employees, thereby increasing the final retirement benefit for those most in need of assistance.

2.9 ASFA also considers that up-front taxation on superannuation contributions should be removed, but argues that both the government co-contribution and taxation measures are necessary to assist people to have the necessary income for a comfortable retirement.⁸

2.10 The Committee questioned whether financial planners who advise clients of the co-contribution scheme might receive a percentage of the 'income' gained from the government's co-contribution each year, as a 'trailing commission'. ASFA stated that there seems to be a range of practices among financial planners, with some not charging a trailing commission for their advice on the co-contributions scheme and others doing so.⁹ The Committee is concerned about the occurrence of this practice.

Superannuation surcharge for higher income earners

2.11 The bill also reduces the maximum superannuation and termination payments surcharge rates in three stages to 7.5% for 2006-2007 and subsequent years, as shown in the following table:

4 Explanatory memorandum, Superannuation Budget Measures Bill 2004 p.3.

5 Submission 3, Investment and Financial Services Association Ltd (IFSA), p.2.

6 Submission 3, Investment and Financial Services Association Ltd (IFSA), Attachment 1, p.6.

7 Submission 1, Australian Council of Trade Unions (ACTU), p.1.

8 Submission 4, the Association of Superannuation Funds of Australia Limited (ASFA), p.1.

9 *Transcript of evidence*, 18 June 2004 (Hodge), pp.E12-E13.

| Year | Current law | New law |
|-------------------------|--------------------|----------------|
| 2003-2004 | 14.5% | – |
| 2004-2005 | 13.5% | 12.5% |
| 2005-2006 | 12.5% | 10.0% |
| 2006-2007 | 12.5% | 7.5% |
| Subsequent years | 12.5% | 7.5% |

2.12 The cost of the measure is expected to be \$55 million in 2005-2006, \$170 million in 2006-2007, and \$385 million in 2007-2008.¹⁰

Response of witnesses

2.13 Despite the assertions of the ACTU that the surcharge reduction is tax relief for the wealthy,¹¹ the Committee heard evidence from both ASFA and IFSA that the superannuation surcharge is 'actually hitting the wrong people, in terms of people who have not reached adequate savings for retirement'.¹² Ms Nicolette Rubinsztein, General Manager Strategy, Colonial First State, who appeared with the IFSA representative, told the Committee that data from Colonial State's superannuation members accounts showed that:

almost half the people paying surcharge have a balance under \$50,000, and a further 25 per cent of people have a balance of between \$50,000 and \$100,000. So, overall, 75 per cent of people investing with Colonial First State who paid surcharge have a balance under \$100,000 which, clearly, is not close to being able to fund their own retirement.¹³

2.14 Ms Rubinsztein further noted that the surcharge is also hitting older people closer to retirement, who do not have adequate savings already. In a similar vein, ASFA told the Committee that anecdotally it is women who have just started to earn a reasonable salary, but whose retirement savings are low, who are incurring the surcharge. This occurs at the expense of their attempts to accumulate sufficient retirement income.

2.15 For these reasons, both ASFA and ISFA support the bill's reduction of the rates of surcharge, and favour the removal of the surcharge altogether.

10 Explanatory memorandum, Superannuation Budget Measures Bill 2004, p.4.

11 Submission 1, Australian Council of Trade Unions (ACTU), pp.1-2.

12 *Transcript of evidence*, 18 June 2004 (Rubinsztein), p.E4.

13 *Transcript of evidence*, 18 June 2004 (Rubinsztein), p.E4.

Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004

2.16 The main initiative in the Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004 is to extend co-contribution eligibility to low-income earners.

Widening of co-contribution eligibility

2.17 The Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004 extends the Government co-contribution scheme for low income earners to some employees who currently do not qualify. Under the current law, an individual must be in receipt of, or entitled to, employer superannuation support, and not be eligible to claim a taxation deduction for their personal superannuation contributions. For example, employees earning less than \$450 per month and employees under the age of 18 employed on a part-time basis have been able to claim a tax deduction for personal superannuation contributions but are generally unable to qualify for the Government co-contribution.¹⁴

2.18 The bill will widen the eligibility criteria so that an individual will no longer require entitlement to employer superannuation support. An individual earning at least 10% of their income as an employee will be able to qualify for a Government co-contribution for 2003-2004 and subsequent income years.¹⁵ This measure was announced on 14 March 2004.¹⁶

2.19 The bill will also remove the potential for 'double-dipping' so that people will not be able to claim a deduction in the 2004-2005 and subsequent income years for personal superannuation contributions if they now qualify for a Government co-contribution.

2.20 The cost of the measure is expected to be \$45 million in 2004-2005, \$50 million in 2005-2006, \$50 million in 2006-2007 and \$50 million in 2007-2008.¹⁷

Response of witnesses:

2.21 Most submissions support the measure in the bill. According to ASFA:

The previous ineligibility was an unfortunate design flaw in the original co-contribution and we support its correction.¹⁸

14 Explanatory memorandum, Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004, p.6.

15 Explanatory memorandum, Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004, p.6.

16 Press release, Minister for Revenue and the Assistant, Senator The Hon Helen Coonan, *Matched super extended to one million more Australians*, 14 March 2004, viewed at: <http://assistant.treasurer.gov.au/atr/content/pressreleases/2004/013.asp?pf=1>, on 18 June 2004.

17 Explanatory memorandum, Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004, p.3.

2.22 Some submitters were concerned that the extension on the co-contribution scheme does not go far enough. For example, Mr Brett Arandall submitted that while the change would extend eligibility to more low-income people, it would still leave a large section of the low-income community ineligible:

A person who has elected to be a full-time parent, and is currently earning no employment income, would not be eligible to receive the Co-Contribution. This is the case under both the current and proposed Section 6(1)(b). I submit that it is just as important for these people who are temporarily out of the workforce to maintain their superannuation contributions, and accordingly should be able to access the Co-Contribution incentive.¹⁹

Other measures in the bill

2.23 The bill contains other administrative changes which are necessary, according to the Explanatory Memorandum,²⁰ to enable the Superannuation (Government Co-contribution for Low Income Earners) Act to operate effectively. These were generally supported by submissions, but no specific comment was received on them.²¹

2.24 These changes will:²²

- specify that the interest rate to be applied to late Government co-contribution payments will be referenced to the rate defined in section 8AAD of the *Taxation Administration Act 1953*, rather than an interest rate prescribed in regulations. This is in keeping with past tax law design that specifies the rate in the legislation rather than the regulations. It is not expected that anyone will be affected by these changes;²³
- specify a time frame (28 days from the co-contribution payment being made) in which a superannuation provider must credit a Government co-contribution amount to a member's account. The 28 day time frame will ensure that Government co-contribution amounts are returned promptly to the

18 Submission 4, the Association of Superannuation Funds of Australia Limited (ASFA), p.2.

19 Mr Brett Arandall, Submission 2.

20 Explanatory memorandum, Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004, p.9.

21 Submission 4, the Association of Superannuation Funds of Australia Limited (ASFA), Submission 6, Securities Institute, p.4.

22 Explanatory memorandum, Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004, p.10.

23 Explanatory memorandum, Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004, pp.11,12 and 13.

Commonwealth, so that the amounts can be credited to an alternative account for the benefit of the qualifying individual;²⁴

- impose the general interest charge (GIC) where a superannuation provider does not repay the Government co-contribution amount within a particular time frame (7 days after the previously mentioned 28 day period). The 7 days will allow superannuation providers a further period, after attempting to credit an amount, to repay that amount to the Commissioner before they are liable to pay the general interest charge on the amount to be repaid;²⁵
- further outline the requirements for Ministerial reports to Parliament. Currently the Superannuation (Government Co-contribution for Low Income Earners) Act provides for the Minister to present quarterly and annual reports on prescribed details about the recipients of the Government co-contribution, the extent of the benefit received, and workings of the Act. This bill will extend the reporting requirement, to encompass, where information is available, and on an annual and aggregated basis, the numbers of Government co-contribution beneficiaries and spouses by prescribed income ranges; and
- include a previously omitted definition. The Co-contribution Act currently does not define the term 'Superannuation Holding Accounts Reserve'. Amendments in the bill will replace references to the Superannuation Holding Accounts Reserve in the Co-contribution Act with the term 'Superannuation Holding Accounts Account' which will then be defined in the Act.

Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004

2.25 The Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004 implements a number of superannuation measures, the most contentious of which relates to changes to the superannuation guarantee earnings base arrangements.

Superannuation guarantee notional earnings bases

2.26 Generally, an employee's ordinary time earnings are used to calculate the employer's superannuation guarantee obligations.²⁶ However, some employers are able to assess their superannuation guarantee obligations against an earnings base that existed prior to 21 August 1991.²⁷ Additionally, an employee's notional earnings base can be specified in an industrial award, an occupational superannuation scheme, or a law of the Commonwealth, State or Territory to be used for superannuation guarantee

24 Explanatory memorandum, Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004, pp.11 and 12.

25 Explanatory memorandum, Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004, pp.11 and 13.

26 *Budget Measures 2004-05*, Budget Paper No. 2, p.20.

27 These include members of the Seafarers' Retirement Fund and the Aberfoyle Award Superannuation Fund. Explanatory memorandum, Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004, p.21.

purposes. This means that an employee can be paid lower superannuation contributions than other employees in similar circumstances.

2.27 The explanatory memorandum to the bill notes that there are very limited data available about how extensive is the use of pre-1991 award provisions as a basis for calculating employer contributions.²⁸ Consultation undertaken in July 2003 with certain industry groups, found that there is wide variation between and within industries over the use of the lower earnings bases. While usage has declined substantially since the superannuation guarantee legislation was introduced, overall it was estimated that around 5% of businesses would use pre-1991 earnings bases.

2.28 To ensure all employees are treated in a consistent manner, employers will no longer be able to rely on pre-1991 earnings bases for superannuation guarantee purposes, and all references to industrial awards, occupational superannuation arrangements, an applicable superannuation scheme or a law of the Commonwealth, State or Territory will be removed from the Superannuation Guarantee (Administration) Act insofar as they relate to specifying notional earnings bases. Instead, an employee's ordinary time earnings will be used as the earnings base for determining superannuation guarantee liability for all employers. These provisions in the bill will not commence until 1 July 2010, providing employers affected by the change with several years to meet the requirement.

Response of witnesses

2.29 According to the ACTU, thousands of employees, including mine workers, Queensland nurses and others under some private sector Queensland awards, as well as groups of employees subject to pre-1991 corporate fund arrangements, receive lower superannuation guarantee contributions than the rest of the workforce.²⁹

2.30 While the explanatory memorandum states that in weighing policy options, equality for employees was considered to be of paramount importance,³⁰ the Committee notes the view of ASFA and the ACTU³¹ that the time allowed for the phasing-in of this measure is too long:

Many employers have been able to make contributions since 1992 under the notional earnings base. Eighteen years is a long time (possibly between one-third and one-half of a person's working life) for superannuation guarantee contributions to have been made at a lower effective rate.³²

28 Explanatory memorandum, Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004, p.30.

29 Submission 1, Australian Council of Trade Unions (ACTU), p.2.

30 Explanatory memorandum, Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004, p.31.

31 Submission 1, Australian Council of Trade Unions (ACTU), pp.2-3.

32 Submission 4, the Association of Superannuation Funds of Australia Limited (ASFA), p.3.

2.31 By contrast, however, the New South Wales Minerals Council Limited submitted that the proposed changes to the notional earnings base, when applied on top of the complex industrial system that exists in NSW, will result in a significant additional cost burden upon the NSW coal industry. It argued that because coal producers in NSW are constrained by a number of cost imposts, including higher workers' compensation premiums, the current coal industry notional earnings base arrangements should be left in place.

2.32 In relation to the proposed removal of all references to awards and other industrial instruments, the ACTU was concerned that this could have the effect of disadvantaging employees who currently receive the benefit of a higher earnings base. It considers that while a higher superannuation calculation would remain enforceable through the industrial system, it is more efficient that the Australian Taxation Office continue with its current approach to enforcement of higher earnings bases:

This position is not inconsistent with supporting removal of references to inferior earnings bases, because employers will still be required to comply with awards and other arrangements requiring a higher earning base. The issue here is not what employers pay but simply to ensure effective enforcement by allowing either the ATO or the industrial system to pursue the entire amount of SG applicable.³³

Other measures

2.33 The bill contains other measures which were generally supported by submissions, but about which no specific comment was provided.³⁴ These include the following:

- a requirement for prescribed pension providers to obtain an actuary's certificate;
- a requirement for those under age 18 to satisfy a work test; and
- retirement savings accounts portability time frames.

Conclusion

2.34 The Committee notes that all witnesses to the inquiry supported the extension of the superannuation co-contribution scheme for low and middle-income earners, and the reduction of the superannuation surcharge rates from 12.5% to 7.5% over three years.

2.35 The Committee notes the data presented by IFSA and ASFA concerning the negative impact of the superannuation surcharge on individuals close to retirement with inadequate retirement savings. The Committee also notes concerns expressed by

33 Submission 1, Australian Council of Trade Unions (ACTU), p.3.

34 Submission 4, the Association of Superannuation Funds of Australia Limited (ASFA), Submission 6, Securities Institute, p.4

ASFA and the ACTU that the time allowed for the phasing-in of changes to the Superannuation Guarantee earnings base arrangements is excessive.

Recommendation

The Committee recommends that the Senate pass the bills.

SENATOR GEORGE BRANDIS

Chair

SUPERANNUATION BUDGET MEASURES BILL 2004

SUPERANNUATION LAWS AMENDMENT (2004 MEASURES NO 1) BILL

AND

SUPERANNUATION LAWS AMENDMENT (2004 MEASURES No 2) BILLS

Additional Comments by Labor Senators

Superannuation Budget Measures Bill 2004

Labor believes that the proposed reduction of the superannuation surcharge tax, which applies to high income earners with an annual income in the year commencing 1 July 2004 of more \$99,700, is an exclusive tax cut for less than 5% of the population.

Labor notes that there is no government proposal for a reduction in the contributions tax which would benefit low and middle income earners. Labor will not support this exclusive tax cut.

The extension of the low income earners co-contributions scheme is claimed to be of benefit to low and middle income earners. Labor asks how many genuine low income earners can find up to \$1000 after tax from their disposable income to allow them to contribute to this scheme.

Unfortunately Treasury could not provide any details on either the additional take-up rate or the likely income background of those who will participate, in the scheme. Labor believes that there may be a significant number of higher income earning spouses making contributions for their low to middle income partners and children.

The measure is poorly targeted and unfair particularly given the majority of low and middle income earners do not have the discretionary income to significantly contribute.

Superannuation Laws Amendments (2004 Measures No 1) Bill 2004

This Bill extends the low-income earners co-contribution scheme by removing the current test for participation in the scheme, that an employee must earn more than \$450 per month, and replaces it with a test that requires only 10% of income to be earned as an employee. The test effectively extends the ability to participate in the contribution scheme to those earning less than \$450 per month.

Treasury were unable to provide any estimates of likely take-up rates or predictions of the likely income background of the individuals who are most likely to make contributions when the new test is operative.

The obvious question that Labor asks is how many low income earners earning less than \$450 a months can afford to contribute up to \$1000 from after tax income to superannuation.

It is highly likely that the new test will allow high income earners to make contributions on behalf of their spouses and children who do a minimal amount of work in order to qualify for this scheme.

As Labor has repeatedly pointed out, this measure is poorly targeted and unfair given the majority of low and middle income earners do not have the discretionary income available to participate in the scheme.

Superannuation Laws Amendment (2004 Measures No 2) Bill

The Superannuation guarantee notional earnings base is to be standardised by phasing out certain exemptions that have been in place since 1991. These exemptions have allowed some employers to effectively pay less than the compulsory 9% superannuation (SG) unfairly discriminating against those employees affected by these exemptions.

At the same time that the employees subject to these exemptions have been disadvantaged, their employers have in fact enjoyed a cost advantage compared to other employers who do not benefit from the exemption.

The Government proposal to phase out the exemption over six years with the exemption completely removed in 2010 is inadequate. The employees affected have already been disadvantaged for 13 years.

Labor believes the exemption should end on 1 July 2005 with provision for individual employees to argue an "incapacity to pay" case before the relevant Federal or State Industrial Commission.

SENATOR URSULA STEPHENS
Deputy Chair

Appendix 1

SUBMISSIONS RECEIVED

**Submission
Number**

Submittor

- | | |
|---|---|
| 1 | ACTU |
| 2 | Mr Brett Arandall |
| 3 | Investment and Financial Services Association Ltd (IFSA) |
| 4 | The Association of Superannuation Funds of Australia Limited (ASFA) |
| 5 | NSW Minerals Council |
| 6 | Securities Institute |

Appendix 2

PUBLIC HEARING AND WITNESSES

FRIDAY, 18 JUNE 2004 - CANBERRA

ANDERSON, Dr Michaela, Director, Policy and Research, Association of Superannuation Funds of Australia

BAKER, Ms Kristy, Policy Analyst, Superannuation, Retirement and Savings Division, Department of the Treasury

HODGE, Mr Robert, Senior Policy Adviser, Association of Superannuation Funds of Australia

MALLORY, Mr Alan, Manager, Superannuation, Retirement and Savings Division, Department of the Treasury

RUBINSZTEIN, Ms Nicolette, General Manager, Strategy, Colonial First State

STANHOPE, Mr Bill, Senior Policy Manager, Investment and Financial Services Association