The Senate

# Economics Legislation Committee

## Provisions of the Taxation Laws Amendment Bill (No. 4) 2003

June 2003

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# Senate Economics Legislation Committee

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**Secretariat**

Peter Hallahan, Secretary
Phillip Bailey, Senior Research Officer
Judith Wuest, Executive Assistant

Suite SG.64
Parliament House
Canberra ACT 2600
Ph: 02 6277 3540
Fax: 02 6277 5719
E-mail: economics.sen@aph.gov.au
Internet: http://www.aph.gov.au/senate/committee/economics_ctte/index.htm

# TABLE OF CONTENTS

# CHAPTER 1

# INQUIRY INTO THE TAXATION LAWS AMENDMENT BILL (No. 4) 2003

## Background

1.1 The Taxation Laws Amendment Bill (No.4) 2002 was introduced into the House of Representatives on 13 February 2003 by the Hon. Peter Slipper MP, Parliamentary Secretary to the Minister for Finance and Public Administration. The Bill was passed by the House of Representatives on 6 March 2003 and introduced into the Senate on 18 March 2003.

## Purpose of the Bill

1.2 The Bill provides various amendments to the *Income Tax Assessment Act 1997*, the *Income Tax Assessment Act 1936*, the *Fringe Benefits Tax Assessment Act 1986*, and the *Taxation Administration Act 1953*. The Bill contains seven schedules, each schedule has the following purpose:

- to prevent the double counting of superannuation benefits for RBL purposes where pensions or annuities are commuted and rolled over within the same fund or annuity provider (Schedule 1);
- to make technical corrections and amendments to the uniform capital allowances system to ensure it operates as intended and interacts appropriately with related provisions (Schedule 2);
- to formalise the treatment of income that is neither assessable income nor exempt income (Schedule 3);
- to make amendments to the tax offset carry forward rules to ensure that taxpayers always receive the maximum benefit from refundable tax offsets (Schedule 4);
- to introduce new obligations to withhold from payments to foreign residents and their intermediaries (Schedule 5);
- to ensure that the no Australian Business Number (ABN) withholding event will apply to enterprise-to-enterprise transactions in Australia, and to make the no ABN withholding rules have the same geographical application as the ABN Act (Schedule 6); and
- to provide a Fringe Benefits Tax (FBT) exemption for certain payments to approved worker entitlement funds, and provide a Capital Gains Tax (CGT) roll-over to a fund that amends or replaces its trust deed in order to be approved as an approved worker entitlement fund (Schedule 7).

## Reference of the Bill

1.3 On 19 March 2003, the Senate adopted the Selection of Bills Committee report No. 3 of 2003 and referred the Bill to the Senate Economics Legislation Committee for report by 16 June 2003. The Selection of Bills Committee noted the following issues for consideration: Schedule 7.

## Submissions

1.4 The Committee advertised its inquiry in *The Australian* on Wednesday 26 March 2003. It also wrote to a number of individuals and organisations, including the relevant government agency and Department, who were identified as possibly being interested in the Bill. They were alerted to the inquiry and invited to make a submission. A list of the parties from whom submissions were received appears at Appendix 1.

1.5 The majority of submissions addressed Schedule 7 of the Bill, however issues were raised regarding Schedules 3 and 5. Because the Selection of Bills Committee specifically referred the Committee to Schedule 7 for its inquiry, Chapter 2 of this report begins with consideration of Schedule 7, and briefly considers the other 6 Schedules of the Bill. Chapter 3 considers issues raised with the Committee regarding Schedule 7, and briefly considers issues raised regarding Schedules 3 and 5.

## Hearing and evidence

1.6 The Committee held one public hearing on this inquiry in Parliament House, Canberra on Wednesday, 11 June 2003. 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 is grateful to, and wishes to thank, all those who assisted with its inquiry.

# CHAPTER 2

# BACKGROUND TO THE BILL

2.1 This chapter outlines the main provisions of the Bill. Because the Selection of Bills Committee referred schedule 7 of the Bill to the Committee for consideration, it is dealt with first. Following this the other six schedules of the Bill are discussed briefly.

## Schedule 7 – worker entitlement funds

2.2 Worker entitlement funds were developed to account for the project based nature of the construction industry, and to provide for the protection and portability of employee entitlements. These worker entitlement funds were effectively non-complying superannuation funds, as they were independent trusts, holding the benefits in trust for the employees. Prior to 1999 the practice of employers paying into these funds, was not to pay FBT on such payments. In 1999 the Commissioner issued Taxation Ruling TR 1999/5, which effectively ruled that such payments by employers were subject to FBT. The ATO stated that employers contributing to worker entitlement funds had until 1 April 2003 to comply, that is, to pay FBT when making such contributions.[1]

2.3 Taxation Ruling TR 1999/5 is currently the subject of at least two Federal Court appeals that are pending.[2]

2.4 Because such benefits are eventually taxable in the hands of the employee as either ETPs or salary and wages, applying FBT to the employer contributions would result in double taxation. To avoid such double taxation, Schedule 7 of the Bill establishes a framework to allow approved worker entitlement funds to gain an FBT exemption, and provides a CGT exemption for funds that change their trust deeds in order to be an approved worker entitlement fund.

### *How does a fund qualify as an 'approved worker entitlement fund'?*

2.5 To qualify as an 'approved worker entitlement fund', the fund must either be:

(1) a long service leave fund established and operating by or under a law of the Commonwealth, State or Territory; or

(2) prescribed by regulation but not disallowed by the Treasurer.[3]

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1 Revised Explanatory Memorandum p.85.

2 Action No. V112 of 2003 and Action No. N706-709 of 2002.

3 Schedule 7, item 1, section 58PB.

2.6 Before a fund can be prescribed by regulation the Commissioner must be satisfied that it meets certain criteria.[4] These are:

- *Level of contributor control* – the management of the worker entitlement fund and the management of the investments of the fund must be at arm's length from the contributors to the fund and their associates;[5]

- *Use of fund assets* – under the fund's constituting documents, no more than 5% of total assets of the fund are to be invested in an entity controlled by a contributor or an associate of a contributor. They must also specify that the fund can't provide loans or any other form of financial assistance to contributors.[6]

- *Payments from the contributions to the fund* – Under the fund's constituting documents, payments from contributions to the fund can only be made for the following purposes:
  - to pay workers entitlements to persons in respect of whom contributions are made;
  - to make investments to generate income from the assets of the fund;
  - to reimburse contributors who have paid entitlements directly to persons in respect of whom contributions are made;
  - to return contributions to contributors;
  - to pay, for the benefit of a person in respect of whom contributions are made, an ETP (within the meaning of section 27A of the Income Tax Assessment Act 1936) into:
    - a complying superannuation fund;
    - a complying approved deposit fund; or
    - a retirement savings account
  - to transfer contributions to another approved worker entitlement fund;
  - to pay the reasonable administrative expenses of the fund;
  - to pay amounts to a contributor's external administrator that would otherwise be payable as a reimbursement to contributors who have paid entitlements directly to persons in respect of whom contributions are made or to return contributions to contributors; or
  - to pay interest on, or to repay, money lent to the fund.[7]

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4 Schedule 7, item 1, paragraph 58PB(4).

5 Schedule 7, item 1, paragraph 58PB(4)(a).

6 Schedule 7, item 1, paragraph 58PB(4)(b).

7 Schedule 7, item 1, paragraph 58PB(4)(c).

- *Payments from the income of the fund* – Under the fund's constituting documents, income from the fund can only be used for the purposes of:
  - payments for the same purpose as payments made from contributions to the fund (other than the payment of worker entitlements);
  - to make payments to contributors to the fund; or
  - to make payments to other persons where the payment is specified in subsection 58PB(5).[8]

## *What payments to approved worker entitlement funds will be exempt from fringe benefits tax?*

2.7 For an employer to attract the FBT exemption under the Bill, the contribution must be required under an industrial instrument. This means that the employer must be compelled to make the contribution, it cannot elect to do so, and the compulsion must arise under an 'industrial instrument'. The definition of 'industrial instrument' is that provided in the *Fringe Benefits Tax Assessment Act 1986* (FBTAA)[9] - which is a law of the Commonwealth or of a State or Territory or an award, order, determination or industrial agreement in force under any such law. This includes registered AWAs, an award or if provided for in legislation.

2.8 The contribution must also be for the purposes of making payments for leave, payments in lieu of leave, or payments when an employee ceases employment. Contributions can also be made for reasonable administrative costs of the fund, which does not include payments by the fund for the purposes of providing goods or services to workers (other than a funds own employees), contributors, or beneficiaries of the fund.[10]

2.9 The exemption will not apply to those amounts made above what is required by the instrument, so if an employer is required to contribute $80 a week and chooses to contribute $100, the exemption will only apply to the $80 component of the contribution.[11]

2.10 Because the contribution must be required under an 'industrial instrument', the exemption will not be available where it is required under a common law employment contract or an unregistered agreement.

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8 Schedule 7, item 1, paragraph 58PB(4)(d).

9 Schedule 7, item 1, paragraph 58PA(b) see also Revised Explanatory Memorandum p.88.

10 Schedule 7, item 1, paragraph 58PA(c).

11 Revised Explanatory Memorandum p.88.

### *CGT Roll-Over*

2.11 A CGT roll-over will be granted to a fund that changes or replaces its trust deed for the purposes of having the fund approved as an approved worker entitlement fund, if the assets and members of the fund do not change as a result of the amendment or replacement.[12]

2.12 The FBT exemption and the CGT roll-over both apply to benefits provided, or events occurring on or after, 1 April 2003.[13]

## Schedules not referred by Selection of Bills Committee

2.13 The Selection of Bills Committee specifically directed the attention of the Committee towards Schedule 7 of the Bill and all of the evidence received at the public hearing was directed to schedule 7. **The following discussion of schedules 1 through 6 of the Bill has been provided for the purposes of completeness**. Three submissions made comment on schedules 2, 3, and 5, and these comments are discussed in Chapter 3.

## Schedule 1 – internal roll-overs

2.14 Schedule 1 of the Bill seeks to prevent double counting of superannuation benefits for Reasonable Benefit Limit (RBL) purposes, in cases where pensions or annuities are commuted and rolled over within the same fund or annuity provider. Currently external rollovers (where an Eligible Termination Payment (ETP) is either contributed back into the superannuation accumulation phase or applied towards the provision of another pension or annuity, with another fund) avoid double counting, as the rolled over ETP is reported to the ATO, who then reduces the value of the benefit which was reported previously when the pension or annuity commenced. This ensures the benefit is not double-counted for RBL purposes when it is finally paid out.

2.15 However if the same events occur, but the commuted pension or Residual Capital Value (RCV) of the annuity is rolled over within the same fund, this is not considered an ETP, and hence the rollover is not reported to the ATO. As a result the benefit is double counted for RBL purposes when it is finally taken.

2.16 The Bill expands the definition of 'eligible termination payment' to cover internal roll-over transactions. Together with other amendments contained in the Bill, internal roll-overs will have to be reported to the ATO and taken into account for RBL purposes.

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12 Schedule 7, items 6 to 8, subsection 126-130(2) of the *Income Tax Assessment Act 1997.*

13 Schedule 7, items 5 and 9.

### *Date of application*

2.17 The expanded definition of 'eligible termination payment' will apply to internal roll-overs occurring after 1 July 2001. Those internal roll-overs that occurred between 1 July 1994 and 1 July 2001 will not be covered. However, in the House of Representatives second reading debates the Hon. Peter Slipper MP stated that "the Commissioner of Taxation has undertaken to administer this measure to ensure that taxpayers who rolled over before [1 July 2001] are not disadvantaged."[14]

## Schedule 2 - uniform capital allowance system

2.18 Schedule 2 of the Bill makes technical corrections and amendments to the uniform capital allowances system to ensure it operates as intended and interacts appropriately with related provisions. When the uniform capital allowance system was introduced transitional arrangements for the mining industry were made - the Bill ensures that these apply as intended.

## Schedule 3 – non-assessable non-exempt income

2.19 Schedule 3 establishes a framework for standardising the treatment of non-assessable non-exempt income amounts. The framework allows for the identification of three types of income: (1) assessable; (2) exempt (that which is not taxed but does reduce losses); and (3) non-assessable non-exempt (is neither taxed nor effects losses). The third category was first explicitly recognised in the income tax law in 1992. Because these amounts were still rare at the time the Income Tax Assessment Act 1997 was first enacted, this type of income was only referred to in non-operative material contained in the Act. However in recent years the number of non-assessable non-exempt income amounts recognised by the law has grown, GST on taxable supplies being a considerable one.

## Schedule 4 – Refundable tax offset rules

2.20 Schedule 4 amends the tax offset carry forward rules in Division 65 and the refundable tax offset rules in Division 67 of the ITAA 1997. The amendment will:

- Make a minor change to the tax offset carry forward rules to ensure that tax payers will always receive the maximum benefit from refundable tax offsets;
- Make changes to the refundable tax offset rules to reflect the new SIS rules; and

[14] Second Reading Speech, Taxation Laws Amendment Bill (No.4) 2003, 13 February, 2003.

- Make a correction to the refundable tax offset rules so that double claiming of the private health insurance premiums by both a trustee and beneficiary will not be possible.

## Schedule 5 – foreign resident withholding

2.21 Schedule 5 aims to improve compliance of foreign taxpayers with Australian taxation obligations by providing that amounts be withheld from payments, of a kind set out in regulations, to foreign taxpayers or their intermediaries. The amount withheld will be available as a credit against an assessment of income tax. The new provisions set out the circumstances when withholding will be required and from whom a payer will be required to withhold (including their intermediary). The new withholding requirements will not affect the existing tax obligations of foreign residents such as their need to lodge a tax return or the assessment of their return, other than to allow credits for amounts withheld.

2.22 Where there is a foreign address or the payment is to be made outside Australia, withholding tax is applied. Withholding is not required from payments to the extent that the payment is a living-away-from-home allowance benefit or an expense payment benefit.

2.23 Certain payments will be able to be prescribed in regulations. This will enable payments to be prescribed if they are assessed as a compliance risk.

## Schedule 6 – PAYG withholding where no ABN is quoted

2.24 Schedule 6 amends the ITAA 1976 and the TAA 1953 to ensure that the PAYG no ABN withholding event applies to enterprise-to-enterprise transactions in Australia. It is arguable that currently the requirement that PAYG be withheld where no ABN has been quoted, only applies to payments made between enterprises, and not in cases where the government and non-profit organisations make payments for supplies where no ABN is quoted. This is because the definition of 'carried on in Australia', links to the definition of 'permanent establishment', which is a place where a person carries on a business. The amendment would remove the definition of 'carried on in Australia' from the ITAA 1997, and it would have its ordinary meaning.

# CHAPTER 3

# EVIDENCE PRESENTED TO THE INQUIRY

3.1 The focus of the Committees inquiry was Schedule 7 of the Bill, and the majority of submissions limited their comments to this part of the Bill. There were three submissions that commented on schedules 2, 3, and 5 of the Bill, and these comments are considered later in this chapter. All of the evidence presented at the public hearing was concerned with Schedule 7.

## Schedule 7

3.2 There were seven substantial issues raised in evidence and submissions, in relation to Schedule 7. These were:

1. the double taxation that would result if contributions to worker entitlement funds were not granted FBT exemption, and the effects FBT liability would have on both employers and employees;

2. the Bill's requirement that for contributions to be exempt from FBT, that they be required under an industrial instrument;

3. the purposes that the Bill permits fund income to be used for;

4. the tax rate applied to income of worker entitlement funds;

5. the power of the Treasurer to declare a fund unapproved;

6. the inability of employees to nominate benefits directly to spouses or dependents in the event of death or incapacity; and

7. the commencement date for the CGT rollover accorded to funds that amend their trust deed in order to comply with the legislation.

## *Double Taxation*

3.3 One of the issues raised in submissions is the potential for double taxation that could be applied to contributions if the exemption were not granted. It is this potential for double taxation that Schedule 7 aims to prevent. Prior to Taxation Ruling TR 1999/5, it was the practice of employers to not pay FBT on contributions to worker entitlement funds. The benefits paid out of these funds to employees, have always been taxed in the hands of the employee, either as an Eligible Termination Payment, or as income.

3.4 Taxation Ruling TR 1999/5 ruled that such payments would incur FBT, although the Commissioner gave employers until 1 April 2003 to comply with this ruling.[1] Correspondence from Treasury that was tabled in the hearing indicated that the Commissioner of Taxation had undertaken to not enforce FBT liability on employer contributions, before the Bill receives Royal Assent.[2]

3.5 The Bill's intention to remove such double taxation was strongly supported by all witnesses and submissions. The cost of this double taxation to employers was noted by numerous witnesses and submissions. Incolink stated that if the exemption is not available to them, their employer members would face a collective FBT liability of $72 million per annum,[3] with the Australian Industry Group estimating the FBT liability for their members being $154 million, if the exemption were not available.[4] The Australian Industry Group argued in evidence that if an FBT exemption is not available to employers, the effect would be an increase in labor costs, which would have substantial effects on major infrastructure tenders that have been calculated on present labor costs.[5]

3.6 It was argued both in submissions and evidence that the conditions the Bill placed on employers contributing to a fund (that the contribution be required under an industrial instrument) and the purposes funds could use income for, were too narrow, and as a result did not sufficiently prevent double taxation.

## *Scope of exemption: Required under an industrial instrument*

3.7 The fact that the Bill limits the FBT exemption to contributions required under an industrial instrument attracted significant attention. Concerns expressed related to the inability of many employers to meet the conditions of a payment being 'required' or being made under 'an industrial instrument'.

3.8 Proposed paragraphs 58PA (b) and (c) provide that a contribution to an approved worker entitlement fund will be exempt from FBT, if the contribution is required under an industrial instrument and is either:

- required for the purposes of ensuring that an obligation under the industrial instrument to make leave payments (including payments in lieu of leave) or payments when an employee ceases employment is met; or
- for the reasonable administrative costs of the fund.

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1 *Revised Explanatory Memorandum*, p.85.

2 Correspondence between Treasury and Ms Kerrie Davis of Blake Dawson Waldron, tabled at the public hearing inquiry into the Taxation Laws Amendment Bill (No.4) on 11 June, 2003, p1

3 *Proof Committee Hansard*, Mr John Glasson, p.12.

4 *Proof Committee Hansard*, Mr James Barrett, p.22.

5 *Proof Committee Hansard*, Mr James Barrett, p.22.

*Contribution Must Be Required*

3.9 It was argued in submissions and evidence that there are many employers who may be unable to access the exemption because they will not satisfy the condition of being required to make the contribution under the industrial instrument.

3.10 This may arise because the employer has the option of contributing to a worker entitlement fund rather than being required.[6] This case is not limited to cases where an employer is being altruistic, but may occur as a technicality. It was raised in evidence that in the case of statutory long service leave, an employer often has a choice as to whether payments are made directly to the employee or to a fund. Phillips Fox stated:

> For the building industry, all of the states have established statutory long service leave funds that impose the obligation. In the case of redundancy, the award provides a choice. It provides an obligation to pay an amount, based on years of service, directly to the employee on redundancy as defined in that award or, alternatively—in other words, as an election—instead of paying the employee directly, you may contribute into a fund. To the extent that the contributions exceed what would be payable directly to the employee, that becomes the award entitlement and the employee is entitled to the amount standing to his or her account in the fund rather than to a direct payment under the award. The fact that there is an election between direct payment and contribution to the fund causes the problem.[7]

3.11 It was also suggested that an employer may fail to satisfy the condition that the contribution be required, where the industrial instrument does not specify purposes of the payment, as this may be provided in the trust deed of the entitlement fund, rather than the industrial instrument.[8] The Bill requires that in addition to the contribution being required under an industrial instrument, it must be required for the purposes of ensuring that an obligation to make leave payments or payments when an employee ceases employment are met. In evidence, Phillips Fox stated:

> In the case of industrial instruments, the typical industrial instruments currently in force impose an obligation on the employer to contribute to a redundancy fund but they are silent on the obligation as to payment. The reason they are silent on the obligation to payment is simply because that the obligations are contained in the trust deed….. But because there is no obligation as to the payment of the redundancy amounts in the registered industrial agreements, they too do not comply with the legislation.[9]

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6 Australian Industry Group (Submission 14) page 4, AIG note that this is the case in the National Building and Construction Industry Award 2000.

7 *Proof Committee Hansard*, Mr Peter Charteris, p.5.

8 B.E.R.T. (Submission 12) p.3.

9 *Proof Committee Hansard*, Mr Peter Charteris, p.2.

3.12 The argument in this case is that whilst the industrial instrument requires a contribution, the requirement that the payment be used for leave and redundancy purposes is contained in the fund's trust deed, and not the industrial instrument. The confusion on this issue is reinforced by correspondence with Treasury that was tabled in the hearing.[10]

3.13 In correspondence, Treasury was asked whether an exemption would be available if the industrial instrument stipulated that a contribution be made to a specific fund, but the obligation to make payments to an employee is contained in the constituting documents of the worker entitlement fund. Treasury's response was:

> If the industrial instrument creates an obligation to make payments to a nominated fund, it is considered that the payment is required under an industrial instrument.
>
> The second requirement [that the payment be for purposes of leave or redundancy] is unlikely to be met where it is the constituting documents of an approved worker entitlement fund that impose the obligation to pay leave or cessation of employment entitlements. In this case, the payment is not required for the purposes of ensuring that an obligation under the industrial instrument to make leave payments or payments when an employee ceases employment is met.[11]

*Agreement not an Industrial Instrument*

3.14 There was extensive evidence that restricting the exemption to those employers who have employees engaged under an industrial instrument was a major issue. By requiring that contributions be made under an 'industrial instrument', this means that the employment agreement must effectively be a certified agreement or a registered Australian Workplace Agreement. Unregistered agreements and common law employment contracts will not attract the exemption, even where the conditions are the same as a registered agreement.

3.15 There was evidence from several witnesses that unregistered employment agreements are common in the construction industry. The WA Construction Industry Redundancy Fund (WACIRF) noted in submission that the majority of agreements their employees work under are not registered: 'based on present figures over two

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10 Correspondence between Treasury and Ms Kerrie Davis of Blake Dawson Waldron, tabled at the public hearing inquiry into the Taxation Laws Amendment Bill (No.4) on 11 June, 2003 p.3.

11 Correspondence between Treasury and Ms Kerrie Davis of Blake Dawson Waldron, tabled at the public hearing inquiry into the Taxation Laws Amendment Bill (No.4) on 11 June, 2003, p.3.

thirds of employers contributing into WACIRF will not satisfy section 58PA conditions and will, under present provision of the Bill, remain subject to FBT.'[12]

3.16 In evidence, Phillips Fox estimated that less than half of agreements in the construction industry are currently registered.[13] The Building Employees Redundancy Trust stated in evidence that none of the contributions made to their fund are made under industrial instruments.[14] The WA Construction Industry Redundancy Fund stated in evidence that about 35% of contributions to their fund are made under industrial instruments.[15]

3.17 The reasons why agreements are often not registered was addressed in evidence by Phillips Fox:

> There is a cost involved because you have to go to the commission. Most employers are not sophisticated, and they need to employ somebody who has expertise in this area and pay them to deal with it. As long as you agree to pay the equivalent of the industry standard determined by a registered agreement, your employees are happy and they are getting their entitlements so there has not been a need to have it registered. So there will be a cost involved if unregistered agreements are left out of this legislation, because employers will have to get those agreements registered. Alternatively they will have to pay FBT, which would put them at a competitive disadvantage.[16]

3.18 The South Australian Building Industry Redundancy Scheme Trust (BIRST) argued in its submission that this disadvantage for employers operating with un-registered agreements amounted to discrimination and noted that recommendation 12 of the Royal Commission into the Building and Construction Industry opposed this type of discrimination.[17]

3.19 It was suggested by Incolink that the exemption should be available for contributions made either fully or partially under an enterprise bargaining agreement and/or an award relating to employment in relation to the leave entitlements of employees.[18]

3.20 In evidence Treasury were asked to explain the background to the Bill's requirement that a contribution be required under an industrial instrument. They

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12 WA Construction Industry Redundancy Fund (Submission 4) p.2.

13 *Proof Committee Hansard*, Mr Peter Charteris, p.5.

14 *Proof Committee Hansard*, Mr James Peterson, p.9.

15 *Proof Committee Hansard*, Mr Murray Rzepecki, p.11.

16 *Proof Committee Hansard*, Mr Peter Charteris, p.6.

17 South Australian Building Industry Redundancy Scheme Trust (Submission 9) p.2.

18 Incolink (Submission 6) p. 2.

explained that the purpose was to limit aggressive tax planning, and access a currently existing 'verification' process:

> The background to this was that funds—not the worker entitlement funds but the making of contributions into funds—had been the subject of aggressive tax planning and that was the subject of the tax office's ruling so when the government was designing this provision it needed to make sure that the exemption did not open up any additional tax planning opportunities. One of the considerations that the government thinks is important to ensure that is to make sure that the contribution on behalf of the employee is set out in an industrial instrument and in a registered industrial instrument. The registration process gives an external or third-party verification that the contribution is required. That the obligation to make the contribution exists is also an accountable and transparent process.[19]

3.21 Treasury argued that there were other reasons for not adopting a wide definition and then addressing non-compliance on a case by case basis. They argued that using a wide definition for the exemption, and then policing for compliance, would make it difficult for the Australian Taxation Office to rely on Part IVA of the *Income Tax Assessment Act 1997*:

> [I]f one was to broaden the category and then [find] a way of dealing with schemes when they emerge—and bear in mind that they are not always that obvious immediately—one of the major ways that part IVA of the general anti-avoidance provision in the law may in fact have some difficulty, because there is an aspect of part IVA that says if there is something in the law that particularly allows this then it cannot be a scheme. So you could fundamentally undermine that approach, which would leave you with only the approach of identifying these things on a case by case basis and legislating to exclude them specifically.[20]

## Committee view

3.22 The Committee accepts that there is a real need to build integrity measures into this legislation to ensure these funds are not used for tax minimisation purposes. It also understands the policy intent, which is to ensure that employers make contributions to worker entitlement funds under bona fide agreements. While supporting this policy in principle, the Committee does hold some concerns that compliance will be very difficult for many smaller employees in particular. Labor cost increases that may occur if employers are unable to comply in the short term may also affect contracts. The Committee suggests that the Government monitor the operation of the legislation in its current form, with a view to considering whether to introduce a broader process for certifying payments as bona fide, to better fit the employment model that currently exist in the industry.

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19 *Proof Committee Hansard*, Ms Christine Barron, p.26.

20 *Proof Committee Hansard*, Mr Paul McCullough, p.27.

*Industrial Instrument that has Expired*

3.23 One submission argued that even where the 'required' and 'industrial instrument' elements are satisfied, if registered agreements expire, contributions made under those agreements may not comply.[21] They argued that some agreements might take up to 12 months to renegotiate and register, and in this time contributions will not be exempt.[22] They suggested that the requirement that the contribution be made under an industrial instrument be removed:

> We therefore suggest that the Bill be amended by removing ss58PA (b) and the passage 'under the industrial instrument' from SS58PA(c)(i) so that all contributions made by employers into an approved Worker Entitlement Fund, to meet "leave payments or payments when an employee ceases employment" and reasonable administrative costs incurred by the Fund, will be FBT exempt. Such an amendment to the Bill will ensure that in a real practical sense double taxation of contributions and benefits will be avoided, whilst still requiring that the contributions to Funds meet strict requirements of the 'Worker Entitlement Fund' definition. As it stands, the Bill will practically only prevent double taxation in a minor number of cases.[23]

3.24 The view that an expired industrial instrument would not meet the condition of being an industrial instrument was not shared by either Treasury, nor Phillips Fox.[24] In correspondence tabled in the hearing, Treasury stated that in such cases it: '[W]ill depend on the particular facts and circumstances, however it is understood that an industrial instrument will generally remain in operation after its normal expiry date until terminated or replaced.'[25]

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21 WA Construction Industry Redundancy Fund (Submission 4) p.2.

22 WA Construction Industry Redundancy Fund (Submission 4) p.2.

23 WA Construction Industry Redundancy Fund (Submission 4) p.2. Support for this argument was also made by Contracting Industry Redundancy Trust (Submission 5), p.2.

24 *Proof Committee Hansard*, Mr Peter Charteris, p.5., Correspondence between Treasury and Ms Kerrie Davis of Blake Dawson Waldron, tabled at the public hearing inquiry into the Taxation Laws Amendment Bill (No.4) on 11 June, 2003, p.2.

25 Correspondence between Treasury and Ms Kerrie Davis of Blake Dawson Waldron, tabled at the public hearing inquiry into the Taxation Laws Amendment Bill (No.4) on 11 June, 2003, p.2.

### Committee view

3.25 The Committee accepts the interpretation provided by Treasury, that registered agreements fall within the definition of industrial instrument, until terminated or replaced.

## *Use of fund income*

3.26 Another major issue in submissions and evidence was a concern that under the Bill worker entitlement funds could be precluded from using surplus fund income for training, insurance, counselling and other purposes for members. It is current practice for many worker entitlement funds to use surplus income for such purposes.

3.27 Central to this issue is proposed paragraph 58PB(4)(d). The Bill strictly limits what exempt contributions to a fund may be used for,[26] and provides less restrictions for income from the contributions.

3.28 The Bill clearly prevents an eligible fund using exempt contributions to provide such services, however it might not prevent the fund providing such services as long as they are provided directly to members. Proposed paragraph 58PB(4)(d) along with 58PB(5) allow the fund to use the income from a beneficiary's exempt contributions to make a payment to that person or another person (in respect of whom contributions have been made) for the same purposes as the contributions, or for a payment 'of some kind other than a worker entitlement'.[27]

3.29 The requirement that the person receiving such a payment is a beneficiary of the fund is important, because this could exclude 'training funds' or any other third party who is not themselves a member of the fund providing the service (ie a person on whose behalf contributions have been made). The wide purpose of 'payment of some kind other than a worker entitlement' would arguably cover training or insurance, but could only be provided directly by the fund to members (and could not be provided indirectly via non-members, eg 'training funds').

3.30 This raises a difficulty for current practices, because many worker entitlement funds currently pay income from contributions to training funds or charitable trusts, who then provide the services to beneficiaries.

3.31 Whilst a reading of the Bill appears to prevent funds using income from exempt contributions to provide services to beneficiaries through training funds, Treasury correspondence tabled during the hearing indicates otherwise:

> The fund may retain net income, pay tax on it (being undistributed net income) and apply the balance as it wishes, subject to the deed governing

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26 see s 58PB(4)(c)(i)-(ix)

27 s 58PB(5)(c)(ii)

> the fund. The Bill does not place any restrictions on how the trustee applies these funds.[28]

3.32 When asked about this statement by Treasury, Phillips Fox responded: 'It is a point which we accept if that is the position. Our proposition is that the legislation itself does not make that issue entirely clear.'[29]

3.33 If a fund were to allow the provision of such services in its trust deed, and this was considered inconsistent with proposed section 58PB, then a fund would fail to comply and would not be an approved worker entitlement fund. WA Construction Industry Redundancy Fund (WACIRF) and Incolink argued in their submission that if funds are faced with not gaining approved status, they will not offer training and insurance services.[30]

*The Value of Income Funded Services to the Construction Industry*

3.34 There was substantial evidence given to the hearing of the value of such services and it was widely argued that the income from exempt contributions should be able to be used to pay for such insurance, training and counselling.[31] Some submissions went further, arguing that exempt contributions themselves should be able to be used to cover insurance and ambulance expenses for members.[32]

3.35 Incolink stated in evidence that their benefits have paid out insurance to the value of $40 million, and suggested that without this insurance, most of the cost would have been borne by social security.[33] WACIRF noted in submissions that they use surplus income to provide insurance cover for employees traveling to and from work, which in Western Australia is excluded by State legislation from work cover insurance.[34]

3.36 Evidence was provided of the use of income to provide training. Queensland Construction Training Fund (QCTF) noted that since its inception in 1991 it has allocated $10.4 million in training grants, which has trained around 40,000 workers.[35]

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28 Correspondence between Treasury and Ms Kerrie Davis of Blake Dawson Waldron, tabled at the public hearing inquiry into the Taxation Laws Amendment Bill (No.4) on 11 June, 2003, p.2.

29 *Proof Committee Hansard*, Mr Peter Charteris, p.4.

30 WA Construction Industry Redundancy Fund (Submission 4) p.2-4.

31 WA Construction Industry Redundancy Fund (Submission 4), Master Builders Australia (Submission 7), Incolink (Submission 6), South Australian Building Industry Redundancy Scheme Trust (Submission 9), Queensland Construction Training Fund (Submission 8), Construction, Forestry, Mining and Energy Union (Submission 11)

32 Master Builders Australia (Submission 7) p.5.

33 *Proof Committee Hansard*, Mr John Glasson, p.16.

34 WA Construction Industry Redundancy Fund (Submission 4) p.3.

35 Queensland Construction Training Fund (Submission 8) p.3.

The importance of training funded through entitlement fund income was emphasized by QCTF at the hearing:

> The building and construction industry employers contribute the least of any industry per capita for training in Australia. It is about half the overall industry average. Regrettably, Queensland is 50 per cent worse than any other state. Given the very low levels of investment in training and an attempt to increase the level of investment in training, we would submit that the status quo should be maintained such that the annual income to QCTF of around a million dollars could be maintained [for training purposes].[36]

3.37 Several witnesses also noted that funds use surplus income to provide trauma and drug and alcohol counselling; and that the high mortality and injury rate in the construction industry increased the importance of counselling services. Evidence was given at the hearing by the Construction, Forestry, Mining and Energy Union (CFMEU) of a particular tragedy, emphasising the important role that Incolink counselling services played.[37] They suggested that without Incolink's services, this counselling may not have been available.[38]

3.38 Witnesses argued in evidence, that these services are not only of high value to the industry (and to the taxpayer through the reduced reliance on the social security system that they offer), there are other reasons why they should be exempt from FBT. The CFMEU argued in evidence, that under the *Fringe Benefits Tax Assessment Act 1986*, section 58M exempts work related counselling from FBT. They pointed out the anomaly, that this would mean counselling services offered directly by an employer would be exempt from FBT, but if offered indirectly through a training fund would not.[39]

## Committee view

3.39 The correspondence from Treasury cited in paragraph 3.31, indicates that the Bill does not preclude the use of surpluses for purposes such as training and counselling. However, the provision of such services by a third party specialist may render the fund non-compliant. The Committee does not consider that this is necessarily the case, as it might reasonably be expected that even if the service is provided by a contractual third party, the reality is that the fund is providing the service.

3.40 The Committee suggests that the Government give consideration to clarifying the operation of this provision.

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36 *Proof Committee Hansard*, Mr Greg Shannon, p.9.

37 *Proof Committee Hansard*, Mr Edward Sweeney, p.14.

38 *Proof Committee Hansard*, Mr Raoul Wainright, p.17.

39 *Proof Committee Hansard*, Mr Raoul Wainright, p.14.

3.41 The Committee also suggests that the Government consider listing specified approved purposes for fund income, such as training or counselling. Such purposes could be provided in an expanded list of purposes in proposed subsection 58PB(5).

## *Tax rate for approved funds*

3.42 Another issue relating to approved fund income that was raised, was that where fund income was not returned or distributed, like other trusts, income is assessed in the hands of the trustee. One submission suggested that approved funds should be assessed at the company tax rate, and that surplus income that has been taxed, should be allowed to be used by the fund to provide a reserve to protect capital or for the benefit of the construction industry in the fund's State (as determined by the trustee).[40]

### Committee view

3.43 It is the Committee's view, that as approved worker entitlement funds are effectively non-complying superannuation funds, it is appropriate that they are taxed as they currently are.

## *Treasurer's power to declare a fund not approved*

3.44 Concerns were raised regarding proposed section 58PB(3) which grants the Treasurer the power to declare a fund not approved. Incolink suggested in their submission that this power be removed, or that it be provided on specified grounds only.[41]

3.45 In evidence Phillips Fox expressed their concern about the power:

> I am concerned personally and as a lawyer because there are real issues as to whether there is a proper administrative judicial review process there. If the Commissioner of Taxation were to have the power to disallow then there would be a proper process for that – the Commissioner can only disallow for proper purposes….
>
> …
>
> I am not familiar with any other Act that involves one arm of government approving you and another arm of government taking away from you.[42]

40 Building Employees Redundancy Trust (Submission 12) p.4.

41 Incolink (Submission 6) p.2.

42 *Proof Committee Hansard*, Mr Peter Charteris, p.8.

### Committee view

3.46 The Committee is of the view that there is no basis to believe that the Treasurer would act without advice from the Australian Taxation Office and therefore does not believe that any change in this provision is warranted.

## *Payments on death or incapacity of a member*

3.47 Phillips Fox noted that because approved funds will be restricted to only paying benefits to members, in the case of a member dying, the fund will have to pay the benefits to the member's estate (as opposed to superannuation, where a member may make a binding death nomination, and elect to have benefits paid directly to a dependant or spouse in the event of death). They argued that this will require dependents and spouses to incur unnecessary administration costs, and that the same policy reasons that justified the option of binding nominations for superannuation should apply in the case of entitlement funds. They also argued that similar provision should be provided in the event of bankruptcy or incapacity.[43]

3.48 In correspondence tabled at the hearing, Treasury indicated that a member of an approved worker entitlement fund would be able to elect to have payments paid to a spouse or dependant directly upon their death.[44]

3.49 When presented with this point at the hearing, Phillips Fox responded: '[O]n a literal reading of the legislation, that is not correct. It is not clear to me on what basis they came to that conclusion.'[45]

Committee view

3.50 The Committee considers that the Explanatory Memorandum should be amended to make the policy intent clear.

## *CGT Roll-over*

3.51 The Contracting Industry Redundancy Trust (CIRT) suggested that the date of operation for the CGT rollover provision apply from a date earlier than 1 April, 2003:

> For funds to comply with the new laws, they had to have their trust deeds amended prior to 31st March, 2003. However, the Capital Gains exemptions to protect funds that change their constituting document to comply with the proposed legislation only provided exemption to changes that occur after 1st April, 2003. As there would be no cost to revenue as other provisions of the act limit the application of this exemption, there is no reason why the applicable date for this section not be changed to a date prior to 1st April,

43 Phillips Fox (Submission 10) p.3.

44 Correspondence between Treasury and Ms Kerrie Davis of Blake Dawson Waldron, tabled at the public hearing inquiry into the Taxation Laws Amendment Bill (No.4) on 11 June, 2003, p2

45 *Proof Committee Hansard*, Mr Peter Charteris, p.4.

2003 (say 1st March, 2003, or the date the Bill was introduced to the House of Representatives.)[46]

3.52 One submission stated that in correspondence with the ATO, they were informed that funds would have until 31 March 2003 to comply with the new FBT rules. However the CGT exemption only applies to amendments on or after 1 April, 2003.[47]

Committee view

3.53 The Committee suggests that the Government give consideration to this suggestion.

# Other issues

## *Schedule 3 – non-assessable non-exempt income*

3.54 The Australian Friendly Societies Association noted in their submission, that they were involved in consultations with the Department of Treasury in relation to the Bill, and they support the measures contained in Schedule 3. They urge its passage before 30 June 2003, to help achieve an equitable outcome and to minimise administration and compliance costs for friendly societies.[48]

## *Schedule 5 – Foreign Resident Withholding*

3.55 A submission by the International Banks and Securities Association of Australia[49] raised four concerns with Schedule 5 of the Bill. These concerns were:

1. That the provisions that identify the foreign recipients that are liable for tax are unnecessarily complex and could penalize taxpayers that have reasonable grounds to believe that the recipient is a resident. They recommend that the law should be simplified to place an obligation on a payer to withhold if the recipient entity is a foreign resident, unless the payer has reasonable grounds to believe that the recipient entity is a resident of Australia;[50]

2. That the conditions under which a legislative exemption from withholding is available are too narrow, and in particular, could impose a significant competitive disadvantage on permanent establishments and would be inconsistent with the Government's decision to improve the tax arrangements for permanent establishments through the Review of Internal Taxation. They recommend that the Bill should automatically exempt permanent

46 Contracting Industry Redundancy Trust (Submission 5), p.1.

47 Contracting Industry Redundancy Trust (Submission 5), p.3.

48 Australian Friendly Societies Association (Submission 1) p.1.

49 International Banks and Securities Association of Australia (Submission 17)

50 International Banks and Securities Association of Australia (Submission 17) p.2.

establishments from withholding tax. This could be achieved by allowing the payer to accept a declaration stating the permanent establishments ABN and TFN. Furthermore, they argue that exemption should be available to a foreign resident entity, even where it has no established history of compliance, if it can provide reasonable assurance to the ATO that it will meets its future Australian tax obligation;[51]

3. The proposal that the Commissioner should only grant variations on the amount to be withheld on a payment-by-payment basis would impose an unwarranted compliance burden on taxpayers and could disturb normal market operations. They argue that the Commissioner should have the power to extend a variation for a recipient to a type or a series of payments, and not be limited to individual payments;[52] and

4. The absence of an express exclusion for tax exempt income means that penalties can be imposed on the payer when the recipient has no actual liability to pay Australian income tax. They suggest that an express exclusion for exempt income be provided, otherwise a payer may be liable for a penalty, even where there is no ultimate tax liability.[53]

## RECOMMENDATION

4.1 The Committee recommends that the Bill be passed.

SENATOR GEORGE BRANDIS
Chairman

51 International Banks and Securities Association of Australia (Submission 17) p.3.

52 International Banks and Securities Association of Australia (Submission 17) p.5.

53 International Banks and Securities Association of Australia (Submission 17) p.6.

# LABOR SENATORS
# MINORITY REPORT
# EMPLOYEE ENTITLEMENT FUNDS
# TAXATION LAWS AMENDMENT BILL (No.4) 2003

The purpose of the bill is to provide an FBT exemption for contributions to employee entitlement funds for legitimate as distinct from tax planning purposes. The intention to provide this exemption was announced by the Treasurer in October 2002. It followed a ruling by the Tax Commissioner (TR 1999/5) that was designed to deal with aggressive tax planning by making payments into funds that were not worker entitlement funds of the kind to be protected by this legislation. The tax ruling came into effect on 1 April 2003 and that is the proposed start date for this legislation.

There are a number of issues arising from the bill:

1. The legislation was not introduced until February 2003 resulting in affected parties facing significant transitional problems to comply with the bill.
2. Current industrial awards and agreements do not comply with the bill.
3. Employee entitlement funds currently provide a range of services to their members that do not comply with the bill.
4. Tax will be imposed for the first time on the earnings of employee entitlement funds.
5. The bill is silent on the question of to whom a fund may pay a benefit on the death of a member.
6. The bill lacks a proper judicial review process before delisting of an employee entitlement fund for eligibility for the FBT exemption.

<u>The need for transitional arrangements</u>

The tax ruling (TR 1999/5) had an operative date of 1 April 2003. The Treasurer identified the need for an FBT exemption for employee entitlement funds and announced that one would be provided. This legislation was not introduced into the parliament until February 13, 2003. It contained a number of complexities that were not anticipated by either the employee entitlement funds or the relevant industrial parties. Given the lack of notice of these provisions some transitional arrangements would be highly beneficial.

<u>Current industrial awards and agreements do not comply</u>

To qualify for the FBT exemption under the bill payments must be made in accordance with a registered industrial instrument that contains an obligation to make leave payments, payments in lieu of leave or payments when the employee ceases employment.

No existing award complies with the bill because they provide that an employer may elect to contribute to the fund and if they do they are then bound to contribute to the fund and that will meet their redundancy obligation.

The typical industrial instruments currently in force impose an obligation on the employer to contribute to a redundancy fund but they are silent on the obligation to make payments to employees.

Employees rely on the trust deed of the funds to provide for payment to them of their entitlements under the relevant awards and industrial agreements. This is not sufficient to comply with the bill.

A large number of industrial agreements are not registered. They therefore do not comply with the bill.

This is one of the areas where transitional arrangements would be beneficial. Without them most awards and agreements will not comply and employers will have to pay FBT which will increase their costs. Renegotiating the relevant awards and agreements would be time consuming and carry with it the potential for disputation on unrelated issues.

Recommendation

The bill should be amended to provide that existing industrial agreements be deemed to comply for purposes of the FBT exemption.

Tax imposed on the earnings of employee entitlement funds.

It has been the practice of employee entitlement funds to treat their income as exempt from taxation. In reality the tax due under the law has not been subject to verification and collection.

Under the bill the income of funds will be subject to taxation at the top marginal rate of 48.5%. This is an appropriate piece of tax design.

The Australian Taxation Office gave evidence that it was not intending to pursue the taxation question retrospectively.

Services that do not comply with the bill.

Employee entitlement funds currently provide a wide range of services to their members that are outside those stipulated by the act (leave and redundancy payments) as eligible for the FBT exemption on contributions. These additional benefits are paid out of the income generated by the funds and include; personal accident insurance, emergency transport benefits, dental accident benefits, income protection, lump sum trauma insurance, financial counselling, personal counselling, drug and alcohol programs, hospital cover, training, career counselling, and employment services. These are of significant benefit to members.

The bill has been drawn to only provide the FBT exemption to contributions made to funds that were intended for the protection and portability of employee entitlements. This is an appropriate piece of tax design.

There is however a lack of clarity as to whether the bill would allow the earnings of a fund, after they have been properly taxed at the top marginal rate, to be used to provide services such as training, insurance and counselling to members.

Recommendation

The bill should be amended to explicitly provide that where the earnings of a fund have been taxed at the top marginal rate they can be used to provide services such as training, insurance and counselling to members without affecting the eligibility of contributions to the fund for the FBT exemption.

Legislation silent on payments in the event of the death of a member.

The legislation is silent on the question of to whom a fund may pay a benefit on the death of a member, resulting in it being paid to a member's estate rather than to a dependent. That would require probate and possible loss of the benefit to dependents if the benefit has to be used to pay a debt to the member's estate.

Evidence was received that it is policy in other areas such as superannuation that payments be protected for dependents and that there are special provisions in taxation law that mean that eligible termination payments and superannuation payments on the death of a person are tax free.

Lack of proper judicial review before delisting.

While listing of an employee entitlement fund would take place under a process controlled by the Commissioner of Taxation, the bill contains an unusual provision for delisting by the Treasurer using a disallowable instrument.

This delisting arrangement lacks a proper administrative judicial review process. It is highly unusual for one arm of government to be responsible for providing a benefit and another to be responsible for taking it away.

Recommendation

The bill should be amended to provide that both listing and delisting should be matters for the Commissioner of Taxation and subject to appropriate judicial review.

Senator Jacinta Collins
**Deputy Chair**

Senator Ruth Webber

# Appendix 1

## Submissions Received

| Submission Number | Submitter |
|---|---|
| 1 | Australian Friendly Societies Association (AFSA) |
| 2 | Coal Mining Industry (Long Service Leave Funding) Corporation |
| 2a | Coal Mining Industry (Long Service Leave Funding) Corporation |
| 3 | CoINVEST |
| 4 | WA Construction Industry Redundancy Fund |
| 5 | Contracting Industry Redundancy Trust |
| 6 | Incolink The Redundancy Payment Central Fund Ltd |
| 7 | Masters Builders Australia |
| 8 | Queensland Construction Training Fund (QCTF) |
| 9 | BIRST South Australian Building Industry Redundancy Scheme Trust |
| 10 | Phillips Fox |
| 11 | Construction, Forestry, Mining and Energy Union (CFMEU) |
| 12 | B.E.R.T. Pty Ltd |
| 13 | National Entitlement Security Trust (NEST) |
| 14 | Australian Industry Group |
| 15 | Australian Constructors Association |
| 16 | CEPU (Plumbing Division) |
| 17 | International Banks and Securities Association of Australia (IBSA) |
| 18 | Air Conditioning and Mechanical Contractors' Association of Victoria Limited (AMCA) |

19 Master Plumbers and Mechanical Services Association of Australia (MPMSAA)

**Further information**

Further information accepted as public evidence of the inquiry:

1. Additional information provided for the consideration of the Committee received from The WA Construction Industry Redundancy Fund.

2. Answers to Questions Raised in Consultation Meeting received from The Treasury dated 6 June 2003.

3. Example of the taxation treatment of certain payments into worker entitlement funds received from The Treasury together with response to Senator Collins request for details of Federal Court action.

4. Letter received from Incolink dated 12 June 2003.

5. Information received from Robert Bett, Partner, Deacons on behalf of Incolink dated 12 June 2003.

6. Information received from Phillips Fox regarding further fund details dated 12 June 2003.

7. Additional information provided by WA Construction Industry Redundancy Fund dated 19 June 2003.

# Appendix 2

## Public Hearing and Witnesses

### Wednesday, 11 June 2003, Canberra

ANGELIS, Mr Jim, Chief Executive Officer, Coverforce Pty Ltd, National Entitlement Security Trust Administrator

ASHMAN, Mr Leigh, Chairman, Building Employees Redundancy Trust (BERT) Queensland

BARRETT, Mr James David, National General Manager Construction, Australian Industry Group

BARRON, Ms Christine, Manager, Individuals Tax Unit, Treasury

BETT, Mr Robert, Legal Adviser, Redundancy Payment Central Fund Ltd, Incolink

CALVER, Mr Richard Maurice, National Director Industrial Relations and Legal Counsel, Master Builders Association Inc.

CHARTERIS, Mr Peter Hamilton, Partner, Phillips Fox

FORSYTH, Mr Stuart Frederick, Assistant Commissioner, Office of Chief Tax Counsel, Australian Taxation Office

GLASSON, Mr John, Chief Executive Officer, Incolink

GRANT, Ms Angelia, Analyst, Individuals Tax Unit, Treasury

HARNISCH, Mr Wilhelm, Chief Executive Officer, Master Builders Australia Inc.

McCULLOUGH, Mr Paul Andrew, General Manager, Individuals and Entities Tax Division, Treasury

MERRYFULL, Ms Diane, Assistant Secretary Legal Policy Branch, Department of Employment and Workplace Relations

PETERSON, Mr Brett, Assistant Commissioner, Australian Taxation Office

PETERSON, Mr James, Lawyer, Building Employees Redundancy Trust (BERT)

RITCHIE, Mr Todd, Chief Economist, Master Builders Australia Inc.

ROYCE, Mr Bill, Public Affairs Adviser, Incolink

RZEPECKI, Mr Murray Michael, Company Secretary and Chief Executive Officer, WA Construction Industry Redundancy Fund

SHANNON, Mr Gregory Roger, General Manager, Construction Training Queensland

SWEENEY, Mr Edward, Occupational Health and Safety Representative, Construction, Forestry, Mining and Energy Union

WAINWRIGHT, Mr Raoul David, Industrial Officer, Construction and General Division, Victorian Branch, Construction, Forestry, Mining and Energy Union