

**TEMPORARY RESIDENTS' SUPERANNUATION LEGISLATION  
AMENDMENT BILL 2008 [PROVISIONS]**

**SUPERANNUATION (DEPARTING AUSTRALIA SUPERANNUATION  
PAYMENTS TAX AMENDMENT BILL 2008 [PROVISIONS])**

**MINORITY REPORT**

**SENATOR NICK XENOPHON**

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### **Introduction**

This Inquiry was established to consider the *Temporary Residents' Superannuation Legislation Amendment Bill 2008* and the *Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2008*, referred to the Committee on 25 September 2008, on the recommendation of the Selection of Bills Committee. As outlined in the majority report, the proposed changes were prompted by concerns over 'the growing amount of lost or unclaimed superannuation'.<sup>1</sup>

In short, under the proposed changes, any unclaimed superannuation of temporary residents who leave Australia following the expiration of their temporary visa, and after at least 6 months has elapsed, will be paid to the Australian Taxation Office and subject to 'departing Australian superannuation payment' (DASP) at an increased rate.<sup>2</sup> For many temporary residents, this increased rate will be significantly higher than the amount of tax payable on the income earned.<sup>3</sup>

The Committee received evidence from stakeholders about a number of concerns regarding the implications of the proposed bills. Two areas of particular concern raised throughout the Inquiry included tax implications as a result of the retrospective nature of the proposed changes and compliance costs.

### **Retrospectivity**

The proposed legislation is retrospective in nature. It therefore means that temporary residents who have earned superannuation in Australia in the past on the understanding that when they turn 60, they can have access to their superannuation under existing legislation, will now be subject to significant taxation implications.<sup>4</sup>

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<sup>1</sup> See Committee Report, p 1

<sup>2</sup> See Committee Report, pp 1, 5

<sup>3</sup> See evidence of Mr John Fauvet, Partner, Pricewaterhouse Coopers, *Committee Hansard*, 3 November 2008, p 2

<sup>4</sup> See Committee Report, p 5

This impact is compounded for those income earners who, in good faith, made a decision to increase their level of contributions to their fund.

Mr John Fauvet, Partner at Pricewaterhouse Coopers highlighted that:

*It is just really a question of the rate and of the retrospective nature that applies to those individuals who are serious savers for their retirement, who were encouraged to do so...all of the time when they were here. This may well have been the only opportunity they had to save for their retirement, so they did that based on the then current legislation, expecting to be able to withdraw that superannuation in the same way as Australians can: tax free at age 60.<sup>5</sup>*

He further noted:

*You put 11 grand into super, let us say, you are expecting to get 85 grand out after your contributions tax, and somebody is going to charge you another 25 grand 20 years after you have left.<sup>6</sup>*

Mr Fauvet suggested a more sensible approach would be for the proposed changes to take effect after the commencement of the legislation so that it only applies to temporary residents who enter Australia after that date.<sup>7</sup> This view was also supported by Mercer (Australia) Pty Ltd and Hillross Financial Services Ltd.<sup>8</sup>

### **Compliance Costs for Superannuation Funds**

Another issue canvassed throughout the Inquiry relates to compliance costs associated with implementing the proposed legislation and, in particular, the significant financial impact it will have on superannuation funds if implemented within the proposed timeframe.

Under the proposed changes, the reporting process deadline for temporary residents is 30 April 2009. The Association of Superannuation Funds of Australia gave evidence that the automated process to ensure compliance was on schedule for 31 October 2009, and that to require the proposed reporting date of 30 April 2009 would cost the industry (and ultimately superannuants) between \$10 million and \$100 million.<sup>9</sup> The Association estimates that up to 3 million accounts could be involved in the first reporting phase, which would have to be done manually if automated systems are not in place.<sup>10</sup>

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<sup>5</sup> *Committee Hansard*, 3 November 2008, p 2

<sup>6</sup> *ibid*

<sup>7</sup> *Committee Hansard*, 3 November 2008, p 2-3

<sup>8</sup> See Mercer (Australia) Pty Ltd, *Submission 6* and Hillross Financial Services Ltd, *Submission 1*

<sup>9</sup> *Committee Hansard*, 3 November 2008, p 7

<sup>10</sup> *ibid*

**Recommendations**

- Former and current temporary residents should be exempt from the proposed changes. The proposed legislation should be amended to apply only to temporary residents who enter Australia after the commencement of the legislation.
- In order to minimise compliance costs for super funds and ultimately Australian superannuants, the commencement date of the proposed changes should be deferred to 31 October 2009.

**NICK XENOPHON**  
Independent Senator  
for South Australia