

The Senate

Standing Committee on Economics

Temporary Residents' Superannuation
Legislation Amendment Bill 2008 [Provisions]

Superannuation (Departing Australia
Superannuation Payments Tax) Amendment
Bill 2008 [Provisions]

November 2008

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Senate Standing Committee on Economics

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Chapter 1

Introduction

1.1 The Temporary Residents' Superannuation Legislation Amendment Bill 2008 and the Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2008 were prompted by concerns over 'the growing amount of lost or unclaimed superannuation'.¹ While repatriating temporary residents are entitled to take their superannuation contributions with them, many do not do so. The previous government had announced its intention to undertake a similar measure.²

1.2 The bill provides that after a temporary resident ceases to hold a temporary visa, leaves Australia and at least six months expires, the unclaimed superannuation will be paid to the Australian Taxation Office (ATO). However, the departed residents can claim back their money from the government at any time.

1.3 The measure is estimated to add between \$200 million and \$400 million per annum to government revenue. It will cost government departments around \$12 million a year to administer.

Conduct of the inquiry

1.4 On 25 September 2008, on the recommendation of the Selection of Bills Committee, the Senate referred the bills, which had been introduced into the House of Representatives that day, to the Economics Committee. The Senate asked the committee to report by 20 November 2008.

1.5 The Committee advertised the inquiry nationally and posted details about the inquiry on its website. In addition, it wrote to selected companies and organisations and relevant government departments advising them of the inquiry and inviting them to make submissions.

1.6 The Committee received six submissions to the inquiry. These are listed at Appendix 1, and are available at the Committee's website; http://www.aph.gov.au/Senate/committee/economics_ctte/emigrant_super_bills_08/submissions/sublist.htm.

1.7 A public hearing was held in Sydney on 3 November 2008. The witnesses appearing are listed in Appendix 2. The Committee thanks all those who participated in the inquiry.

1 Senator the Hon. Nick Sherry, 'Temporary residents legislation introduced', Media release 059, 25 September 2008. The total number of 'lost members' (including both temporary residents and domestic workers) now exceeds 6 million and their inactive accounts have over \$12 billion in assets; *Explanatory Memorandum*, p. 53.

2 *Explanatory Memorandum*, p. 54, citing the 2007-08 *Mid-Year Economic and Fiscal Outlook*.

Chapter 2

Taxation aspects of the bill

2.1 The government provides substantial taxation concessions for superannuation savings. There are two main justifications for these concessions. The first is a concern that Australian citizens may be myopic and not make sufficient provision for their retirement incomes if they are not encouraged into superannuation by attractive taxation concessions. The second is that citizens taking responsibility for their own retirement incomes impose a smaller burden on future taxpayers as they will not be claiming the age pension. These rationales also explain why the government prevents Australians withdrawing from their superannuation accounts before retirement (other than under certain exceptional circumstances).

2.2 These arguments do not apply to temporary residents. It is not the Australian government's concern whether they make adequate provision for their retirement and Australian taxpayers will not be paying them an age pension if they do not. For this reason, they are allowed to withdraw their superannuation when they leave Australia, as what is known as a 'departing Australian superannuation payment (DASP)'.¹

2.3 As the rationale for encouraging superannuation does not apply to them, the government recoups (some of) the tax concession they have been given on their superannuation by applying a final tax on the DASP. (An alternative would be to exempt temporary residents from being paid compulsory superannuation. However, as Treasury pointed out, 'exempting employers from paying super guarantee on temporary residents ...[would make] foreign workers cheaper to employ than local Australian workers'¹.)

2.4 This tax is criticised, as are all taxes. In this case it is argued that it discourages skilled workers from coming to Australia (or staying):

We are trying to make it easy and pleasant for skilled workers to come here. We are not going to do that if we are going to impose an enormous rate of tax on their superannuation.²

...these changes are likely to make it more difficult and more expensive for employers to recruit skilled temporary residents. In some cases, current temporary residents may decide to leave Australia earlier than otherwise planned in order to avoid the higher proposed tax rates.³

2.5 At best, there is grudging acceptance of the tax but criticism of the rate:

1 Mr Nigel Murray, Treasury, *Proof Committee Hansard*, 3 November 2008, p. 20.

2 Mr John Fauvet, PricewaterhouseCoopers, *Proof Committee Hansard*, 3 November 2008, p. 2.

3 Mercer, *Submission 6*, p. 1.

We do not have, and I cannot imagine that our clients have, any great concern with people paying tax on early access to super... It is just really a question of the rate...⁴

2.6 It could be argued Australia is treating temporary residents more generously than Australians temporarily residing overseas are treated. Australians abroad often contribute to the pensions of the locals by paying a 'social security contribution' (essentially an income tax surcharge like the Medicare levy) from which the Australian will never benefit.

2.7 Price Waterhouse Coopers (PwC) take issue with this argument, which they see as a misleading comparison. They argue 'superannuation is not social security. It is saving for retirement.'⁵ But it is still an amount deducted from incomes for the purpose of funding retirement incomes, and temporary residents in Australia should appreciate that they are allowed to take most of their contribution away with them.

Increase in the tax rate

2.8 This bill does not introduce the DASP tax; it has been in place since 2002. However, the bill increases the rate from 30 to 35 per cent. [#check- However, for many temporary residents this still means superannuation is less taxed than are other savings vehicles.⁶]

2.9 One criticism of the increase in the tax rate concerns a lack of consultation. Treasury concedes it was not discussed in the original public consultation paper, issued in May. However, the potential increase was mentioned during further targeted consultation which occurred with certain key industry groups and associations in the process of finalising the legislation.⁷ ASFA informed the committee that Treasury had informed it of the possible increase in the DASP tax rate in correspondence from early September.⁸

Impact on deliberate balances

2.10 Not all superannuation of departed temporary residents is 'lost'. The Association of Superannuation Funds of Australia argues the bill may impose an

4 Mr John Fauvet, PricewaterhouseCoopers, *Proof Committee Hansard*, 3 November 2008, p. 2.

5 PriceWaterhouseCoopers, *Submission 2*, p. 2.

6 For example, a top executive who is paid \$100 as salary is taxed on it at 46.5 per cent. If she then puts it in a bank deposit, and earns 6 per cent (again losing 46.5 per cent of this in tax) for three years, she will have \$59. If instead she receives the \$100 as superannuation, it is initially taxed at 15 per cent, the 6 per cent return is not taxed, and after paying 35 per cent tax on the DSAP she is left with \$66. Workers, such as backpackers, on lower marginal tax rates may find their small amounts of superannuation more heavily taxed than would a bank deposit.

7 Mr Nigel Murray, *Proof Committee Hansard*, 3 November 2008, p. 22.

8 Mr Robert Hodge, *Correspondence*, 3 November 2008.

additional tax on some temporary residents who have deliberately rather than inadvertently left funds in Australian superannuation accounts.⁹ Some high-earning temporary residents may even have 'salary sacrificed' to build up superannuation. Unfortunately, none of the witnesses were able to provide an estimate of the proportion of temporary residents' superannuation which is deliberate, although AFSA did say it was likely to be only 'a small number of cases'.¹⁰

2.11 ASFA argues that 'the sums involved for each individual could be substantial' and that they should be given relief.¹¹ ASFA do not explain why it should be the role of the Australian taxpayer to subsidise an ongoing savings vehicle for wealthy former residents who have left the country.

Retrospectivity

2.12 This concern about temporary residents who deliberately leave superannuation in Australia leads to an objection to the bill on the grounds of retrospectivity. In other words, the changes apply to current and former temporary residents as well as future temporary residents. Temporary residents who have accumulated superannuation savings in Australia in the past have done so on the basis that when they turn 60, they can access their superannuation on the same terms as Australian citizens could. Under the measures proposed in the bill, once they leave and a six month period elapses, their superannuation funds will be transferred to the ATO and will be subject to the DASP.

2.13 Price Waterhouse Coopers (PwC) was particularly critical of this aspect of the bill. In verbal evidence to the committee, a Partner at PwC elaborated:

You put 100 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.¹²

2.14 He suggested that the bill could easily be amended such that it only applies to people who enter Australia after the date of effect. PwC's submission also recommended that to exempt 'serious savers', the committee should consider a threshold (\$10 000) over and above which temporary residents are allowed to 'opt out' of the proposed measures.¹³

2.15 Hillross Financial Services was also critical of the retrospective application of the bill and also suggested that the measures should not apply to temporary residents

9 Mercer also makes this criticism; *Submission 6*, p. 3.

10 Association of Superannuation Funds of Australia, *Submission 5*, p. 5.

11 Association of Superannuation Funds of Australia, *Submission 5*, p. 5.

12 Mr John Fauvet, *Proof Committee Hansard*, 3 November 2008, p. 2.

13 Price Waterhouse Coopers, *Submission 2*, p. 2.

entering Australia prior to the date of effect of the legislation.¹⁴ Their submission noted that these temporary residents not only have significant exposure to poorly performing growth assets, but the bill's measures will terminate their fund membership and transfer their reduced balances to the ATO.¹⁵

2.16 Mercer, a superannuation consultancy, was another submitter recommending that any changes should be restricted to future temporary residents. As with PwC and Hillcross, it noted that many former temporary residents have deliberately chosen to leave their superannuation savings in Australia expected that under current laws, they could claim their investment on retirement at the normal tax rates applicable to superannuation benefits. Mercer also argued that former temporary residents may not be aware of the changes and their Australian superannuation fund 'is unlikely to know whether any of their members are former temporary residents'.¹⁶ It recommended that if the bill is to be retrospectively applied, it should be deferred to enable former temporary residents to be contacted to give them an opportunity to act before the changes come into force.¹⁷

2.17 Treasury was asked its view on the retrospective application of the bill. Mr Nigel Murray, Manager of the Contributions Unity in Personal and Retirement Income Division, responded:

...the Australian taxpayer is funding the taxation concessions which are going into superannuation which these individuals are taking advantage of. The government does not consider it appropriate that those taxation concessions are provided to those individuals as they will not be retiring in Australia.¹⁸

Committee view

2.18 The committee acknowledges the concerns of many submitters that the bill will affect the taxation treatment of both former and current temporary residents. However, these investors have benefited from Australia's superannuation tax regime and were given no guarantee that the taxation treatment of their accounts would not be altered. Should they claim their funds before the bill is passed, they will enjoy the full benefit of the current law. Moreover, the committee notes that it is the Australian taxpayer that has funded the generous tax provisions from which many former and current temporary residents have benefited. It is only fair that the full extent of these provisions should benefit those who invest *and* retire in Australia.

14 Hillcross Financial Services, *Submission 1*, p. 1.

15 Hillcross Financial Services, *Submission 1*, p. 2.

16 Mercer, *Submission 6*, p. 3. The challenge of communicating the bill's measures is discussed below.

17 Mercer, *Submission 6*, p. 5.

18 Mr Nigel Murray, *Proof Committee Hansard*, 3 November 2008, p. 20.

2.19 Having different rules for people with amounts over an arbitrary threshold in their accounts and allowing them to 'opt out' of the provisions would introduce further complexity into the legislation. There are doubts about the practicality of requiring people to be allowed to 'opt out' when the bill is concerned about a group of people who mostly have superannuation remaining in Australia because their whereabouts are unknown.

Other criticisms

2.20 Hillcross argue it is unfair that the funds are not indexed while they are held by the ATO.¹⁹ Of course, as the experience of recent months shows only too well, the private superannuation funds do not guarantee to preserve the real value of superannuation balances either. On the other hand, funds with the ATO are not subject to fees. In some cases, small amounts left in superannuation funds may be totally whittled away by flat rate fees.

2.21 Hillcross also claims that an unintended consequence of the bill is that superannuation provided by international companies with staff temporarily posted to an Australian subsidiary would be captured by the legislation. But such companies can avoid this by simply advising their staff to make a DSAP withdrawal when they complete their posting.

2.22 The committee notes it is not surprising that superannuation funds disapprove of the bill as they would prefer to continue managing the unclaimed funds, and earn fees or margins on them, than hand them over to the government.

Recommendation 2.1

2.23 **The committee recommends that the Senate pass the bill.**

19 Hillcross Financial Services, *Submission 1*, p. 1.

Chapter 3

Timing issues

Timing and administration issues

3.1 Another objection to the bill was that the proposed lodgement date of 30 April 2009 does not allow the superannuation industry adequate time to implement the changes. The Association of Superannuation Funds of Australia (ASFA) noted in its submission that the superannuation industry has a long-standing policy that significant new measures should have a date of effect that is no earlier than 12 months following the granting of Royal Assent.¹

3.2 Specifically, ASFA argued that implementing the measures in this bill by 30 April next year would create extra administration costs for superannuation funds. The ATO has new unclaimed moneys reporting arrangements which will handle unclaimed monies reports due for lodgement by 31 October 2009. Superannuation funds are also working to develop their systems to meet this October deadline. While the ATO will meet the bill's April 2009 lodgement date through transitional arrangements, the funds will have to bring forward their IT development schedule by six months. On ASFA's estimate, the extra costs associated with the revised schedule are between \$10 million and \$100 million.²

3.3 ASFA told the committee:

...superannuation funds feel that they cannot meet the 30 April deadline because that would involve bringing forward the systems development that is already in train by six months. Part of the reason that this cannot be done is, as I said, that the system's timetables are usually booked out a year in advance. The other part is that superannuation trustees often cannot put aside the money to spend on systems development until they have firm legislation in place. Since this legislation is yet to be passed, they feel they cannot at this point even start the development work. If the systems are not in place, the other alternative would be to report manually. The first report is going to be very large. It is going to be an enormous task to do manually. Even if legislation were passed today and we all started trying to get manual systems in place for 30 April 2009. Part of the reason is that we are going to need to sort the data against a list provided by the...ATO. That is a large task because of the volume of accounts. We estimate up to three million accounts could be involved in that very first reporting phase.³

1 Association of Superannuation Funds of Australia, *Submission 5*, p. 2.

2 Ms Melinda Howes, *Proof Committee Hansard*, 3 November 2008, p. 7.

3 Ms Melinda Howes, *Proof Committee Hansard*, 3 November 2008, p. 7.

3.4 ASFA also explained that the process of confirming lost superannuation accounts with the ATO will create an extra burden for the funds. The ATO will notify the fund that certain people have been identified as temporary residents and the fund will match that list against their members to see if these people are still a member of a fund. They will verify their members and pass the data on to the Tax Office. This additional process will have a cost.⁴

3.5 ASFA acknowledged that the ATO have been 'very cooperative' in working with the superannuation industry to try and work out the best way to administer the legislation. However, ASFA's position on the timing of the proposed changes consistently differed to that of the Tax Office.⁵ It is concerned that the government's implementation timeline imposes 'a really significant additional (financial) burden'.⁶

3.6 However, a later implementation date will delay government revenue. Treasury noted that if there was a delay in the implementation of the bill's measures, the revenue estimate in the first year (currently \$250 million) would have to be revised. It recognised that while the same amounts would ultimately be collected, they would be collected later which would affect the government's short-term budgetary position. At an interest rate of 5 per cent, delaying the collection of \$250 million for six months is a cost to the public purse of \$6 million.

3.7 Moreover, Treasury argued the government has considered the issue of timing and is of the view that the funds do have sufficient time to prepare. It noted that the measure has been in the public domain for some time and the industry has been able to start making at least preliminary preparations.⁷ Treasury also noted that if the industry funds do not meet the government's deadline, there are administrative and financial penalties that can be imposed.⁸

3.8 The Government expects the average superannuation fund to incur compliance costs of \$33,000 on implementation and \$2,500 per annum; amounting to total costs for the industry of \$30 million and \$2.3 million per year.⁹ There will be administrative savings for them in not having to maintain inactive accounts. However, the Association of Superannuation Funds of Australia is concerned that 'as many as 3 million individuals may be caught by the policy' and that implementation costs could be significantly higher.¹⁰

4 Mr Robert Hodge, *Proof Committee Hansard*, 3 November 2008, p. 9.

5 Mr Robert Hodge, *Proof Committee Hansard*, 3 November 2008, p. 8.

6 Mr Robert Hodge, *Proof Committee Hansard*, 3 November 2008, p. 8.

7 Mr Nigel Murray, *Proof Committee Hansard*, 3 November 2008, p. 21.

8 Mr Nigel Murray, *Proof Committee Hansard*, 3 November 2008, p. 21.

9 Estimates in this paragraph are taken from the *Explanatory Memorandum*, pp 9 and 60.

10 Association of Superannuation Funds of Australia, *Submission 5*, p. 3.

Committee view

3.9 The committee believes that the superannuation industry can comply with the timetable of April 2009 as proposed in the bill. The industry was fully involved in the government's consultation process and has not put a convincing case that the work they claim would take 12 months could not be done by the end of April next year. Further, the committee believes that many—if not most—funds will not have many former temporary residents; those that do are typically well resourced and experienced in managing change. And it is not unreasonable to expect these funds to implement system changes before the bill is passed into law. They must plan for various other contingencies, many of which are far less likely to eventuate than this legislation.

3.10 That said, the committee does believe it is important for the government to monitor the funds' progress in establishing systems to meet the lodgement date of 30 April 2009. Where genuine difficulties do arise in particular cases, there may be cause to extend the proposed lodgement date.

The effect of the bill on Eligible Rollover Funds

3.11 A corollary of the timing issue was the alleged effect of the bill's measures on Eligible Rollover Funds (ERF). An ERF is designed as a low cost product for administering lost and inactive accounts. Both ASFA and the superannuation consultancy, Mercer, argued that these funds may have difficulties redeeming investments in a tight timeframe so as to pay account balances to the ATO. ASFA noted that "should a 'fire sales' of assets be required this will adversely impact on the value of the remaining members' accounts", which may ultimately affect the financial viability of the fund.¹¹ Similarly, Mercer foresaw:

...considerable difficulties in determining the appropriate amounts to transfer and trustees may have difficulty in obtaining sufficient cash to make the payments in a short space of time without unduly impacting on the fund's short term investment strategy. Due to their nature, we expect that Eligible Rollover Funds will be one group of funds that may be particularly exposed to these changes.¹²

3.12 As part of its broad oversight of the implementation process, the government should closely monitor the impact of the bill's timetable on ERF's.

11 Association of Superannuation Funds of Australia, *Submission 5*, p. 4.

12 Mercer, *Submission 6*, p. 5.

Chapter 4

Promotion aspects

4.1 The Students' Representative Council at the University of Sydney suggests that 'many of the unclaimed superannuation accounts, with which these bills are concerned, are those of overseas students'.¹ They believe more emphasis should be placed on promotional material and simplified paperwork to increase the number of overseas students who take their superannuation with them. They claim:

We believe that more international students would take their superannuation with them when they depart if they knew that they could and if doing so were simplified... The system is currently not well advertised and is too cumbersome.²

4.2 They also suggest a specific classification within superannuation funds for overseas students and at the time of joining they be asked to give a contact address in their homeland.

4.3 Mercer, a consultant to superannuation funds, is also critical that the bill places no requirement for the ATO to provide information to former temporary residents.³

4.4 At present, the 'departing Australia' card filled out at the airport refers to claiming superannuation, but this message may be forgotten by the time the departee is settled back in their home country.

4.5 A possible risk from the bill is that with the transfer of lost funds from the superannuation funds to the ATO, the government has a disincentive to encourage former residents to claim their superannuation (just as the superannuation funds do now).

Recommendation 4.1

4.6 The committee recommends that overseas students, and other recent arrivals from overseas, be asked to give a contact address in their home country when they start contributing to superannuation funds in Australia.

1 Students' Representative Council, University of Sydney, *Submission 4*, p. 1.

2 Ms Kate Laing, *Proof Committee Hansard*, 3 November 2008, p. 12.

3 Mercer, *Submission 6*, p. 1.

Recommendation 4.2

4.7 The committee recommends that clear promotional material in a range of languages be provided to universities to give to foreign students reminding them to claim their superannuation funds when they leave Australia.

Recommendation 4.3

4.8 The committee recommends that the Department of Immigration and Citizenship consider whether it is feasible to write to international students and other workers on temporary visas, reminding them about withdrawing superannuation, about a month before their visas expire.

Senator Annette Hurley

Chair

Coalition Senators' Additional Comments

Coalition Senators provide the following additional comments in relation to these bills.

Coalition Senators recognise the advisability of measures that ensure that superannuation earned by temporary residents whilst in Australia does not become 'lost' following their departure and recognise that whilst in Government, the Coalition had announced its intention to move towards implementing such measures.

However, as always, the devil is in the detail and the proposed legislation presented by the Government in these bills has attracted strong and reasonable representations from stakeholders highlighting a number of legitimate concerns, many of which appears to have been brought to the attention of the Government without subsequent action being taken.

These concerns include:

- The automatic change of status of all temporary superannuation accounts to the equivalent of 'lost' status 6 months after their visa expires, or after they leave Australia. This applies regardless of the extent to which the account owners might be actively managing their funds and the degree of contact they maintain with the super funds
- The difficulty faced by temporary residents accessing their superannuation funds, both before leaving the country and, after.
- The retrospective effect on temporary residents who have earned superannuation in Australia, maybe even added to it out of personal funds, on the understanding that they can access those funds upon turning 60 years of age, under the same taxation regime as applies to an Australian resident, whether they are in Australia or not.
- The timing of the measures imposed by the bill was also raised as problematic – super funds submitted that it is unrealistic to require them to provide the first report on temporary residents to the ATO by April 2009. They estimate the cost of trying to do so across the industry could be up to \$100 million (which would be borne by superannuants).
- Suggestions were made that not enough is being done to make sure temporary residents are put in contact with their super before they leave the country and that education/ awareness campaigns or direct contact through Immigration would help address this issue.

The reality is that this is not in the revenue raising interests of the Government.

Coalition Senators consider these concerns to be valid and worthy of note and believe that the Government could have addressed these, at least to some extent whilst still achieving the desired outcomes of the proposed legislation.

APPENDIX 1

Submissions Received

Submission Number	Submitter
1	Hillross Financial Services Ltd
2	CONFIDENTIAL
3	Department of Immigration and Citizenship (DIAC)
4	Students' Representative Council, University of Sydney
5	Association of Superannuation Funds of Australia Ltd (ASFA)
6	Mercer

APPENDIX 2

Public Hearings and Witnesses

SYDNEY, MONDAY 3 NOVEMBER 2008

- FAUVET, Mr John, Partner,
PricewaterhouseCoopers
- HODGE, Mr Robert, Principal Policy Officer,
The Association of Superannuation Funds of Australia
- HOWES, Ms Melinda Suzanne, Director,
Policy and Industry Practice, The Association of Superannuation Funds of
Australia
- LAING, Ms Kate Leonie, President,
Students Representative Council, University of Sydney
- LONG, Ms Charlotte, Casework and Policy Manager,
Students Representative Council, University of Sydney
- MURRAY, Mr Nigel, Manager, Contributions Unit,
Personal and Retirement Income Division, Treasury
- NAIDU, Ms Shaz, Policy Analyst,
Contributions Unit, Personal and Retirement Income Division, Treasury

