

Chapter 3

Views on the bill

3.1 The committee received four submissions on the bill. The Department of the Treasury, which sponsored the bill, provided a submission which briefly outlined the policy justification for the measures and provided information on the process and outcomes of public consultation over the bill, mainly in respect of the reforms to income tests. Treasury also provided a second submission responding to industry submissions.

3.2 The other submissions were received from industry participants, Mercer and the Industry Funds Forum Inc (IFF), and the Australian Council of Trade Unions.

General issues

Time for inquiry

3.3 The Mercer submission expressed concern over the 'very short window of opportunity to make submissions on the bill', given the significance of some of the measures (particularly the Schedule 3 amendments).¹

3.4 Although it did not explicitly comment on the period allowed for the inquiry, the IFF stated that it had confined its submission to comment on a couple of issues 'due to the very short time frame for consultation' on the bill.²

PAYG tax instalment reduction/introduction of regulations (Schedule 1)

3.5 Neither of the industry submitters provided comment on the proposed PAYG tax instalment reduction.

Temporary residents' superannuation and unclaimed money (Schedule 2)

Previous criticisms

3.6 Mercer made a submission to the committee's 2008 inquiry into the provisions of the bills that introduced the changes to the unclaimed money regime for temporary residents' superannuation.³ While Mercer consider the measures in the current bill as

1 Mercer, *Submission 2*, p. 1.

2 Industry Funds Forum Inc., *Submission 3*, p. 3.

3 For details see the Senate Standing Committee on Economics report, *Temporary Residents' Superannuation Legislation Amendment Bill 2008 [Provisions]; Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2008 [Provisions]*, November 2008.

being of 'little consequence' in the context of that new system, their submission repeats its broader criticisms of the 2008 changes.⁴

Committee view

3.7 The committee notes that a number of Mercer's concerns were examined in its November 2008 report, *Temporary Residents' Superannuation Legislation Amendment Bill 2008 [Provisions]; Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2008 [Provisions]*. It is also notable that Treasury undertook a consultation process on the current bill at the end of 2008, in which many of these and other issues were considered. This led to a number of changes to the proposed measures, as outlined in the Treasury submission.

3.8 The committee also observes that the issues raised by Mercer concerning the unclaimed money regime changes affecting temporary residents' superannuation are strictly beyond the scope of the inquiry. Accordingly, the committee did not examine or re-visit any such issues as they were not relevant to the content or operation of the provisions of the bill.

Reforms to income tests (Schedule 3)

3.9 The ACTU submission expressed support for the reforms to income tests as they currently appear in Schedule 3. The ACTU described the measures as 'important equity measures which remove inconsistencies in the treatment of non-wage remuneration, better target the dependency tax offsets to lower-income families and treat the income of individuals and families without access to salary-sacrificing in an equivalent way to those who are able to access such arrangements'.⁵

Ad hoc withdrawals from superannuation

3.10 The IFF expressed concern about the proposal for all withdrawals from superannuation being counted as income in the year of withdrawal. Their submission cites the example of a retiree whose total income is comprised of the aged pension and an allocated superannuation pension from which is drawn the minimum 5 per cent per annum. An additional withdrawal from the allocated pension fund for, say, the purchase of a new car, would be treated as income, thereby reducing that person's aged pension payments in that year.

3.11 The IFF submitted that reductions in aged pension payments for purposes such as the periodic replacement of assets or for health expenses will unfairly affect many superannuation fund members.⁶ Accordingly, IFF urged the government to

4 Mercer, *Submission 2*, pp 2, 9.

5 Australian Council of Trade Unions, *Submission 4*, p. 1.

6 Industry Funds Forum Inc., *Submission 3*, p. 4.

retain existing taxation laws that allow ad hoc withdrawals from superannuation without affecting aged pension entitlements.

3.12 Responding to the IFF's submission on this issue, Treasury advised:

The [IFF] submission includes a case example involving an Age Pension recipient however reportable superannuation contributions, which are to be added to income tests for income support recipients below Age Pension age from 1 July 2009, are already assessed for individuals above Age Pension age.⁷

Committee view

3.13 The committee notes that the measures will not have the effect detailed in the example provided.

3.14 The committee notes also that the broader policy intent of the income test reforms is to remove inconsistencies in the treatment of certain types of income when determining eligibility for government support payments. These measures aim to make Australia's tax and transfer system more equitable, and are underlined by the idea that, generally speaking, government support payments are means- or income-tested. The EM explains:

This approach promotes the underlying principle of government support that individuals with greater means to support themselves receive less support than those with fewer resources or those in greater need of assistance. Income tests are generally comprised of different types of income, such as income from work-related activities or income from investments.⁸

Employer superannuation contributions

3.15 The IFF was also concerned about the effect of employer superannuation contributions in excess of compulsory 9 per cent contributions on determining a person's eligibility for government benefits, such as Family Tax Benefit A and B.

3.16 The IFF was concerned that additional superannuation payments by an employer will be added to a person's assessable income and thus may have a detrimental effect on qualification for other benefits.⁹ They suggest that in cases where an industrial agreement requires an employer contribution above the 9 per cent compulsory contribution rate, the additional contribution should be excluded for the purposes of calculating an entitlement to benefits such as Family Tax Benefit A and B.

7 Department of the Treasury, *Submission 1a*, p. 1.

8 Tax Laws Amendment (2009 Measures No. 1) Bill, Explanatory Memorandum, p 81.

9 Industry Funds Forum Inc., *Submission 3*, p. 5.

Committee view

3.17 The committee observes that the IFF's reservations about counting excess employer superannuation contributions as income for the purposes of determining eligibility for assistance payments, such as family tax benefits, goes to the heart of the policy issue driving the reform. As the EM notes, it is a source of inequity that certain fringe benefits are not currently counted as income in determining eligibility for certain government assistance programmes. Also, the proposed changes will collectively bring a more consistent approach to determining eligibility for the range of government assistance payments, thereby reducing complexity for both administrators and persons interacting with any such schemes.

Cost issues

3.18 Mercer contended that, due to the vagueness of the legislation, 'a very significant proportion of employers will need to seek professional advice as to their responsibilities' for reporting, and argues that the cost to employers of complying with the income test reforms has been underestimated.¹⁰ It cites as an example the first-year direct compliance cost estimate:

...the estimated costs of \$648 for 25,000 small to medium businesses seem to be unrealistic. Even the cost of advice obtained in order to understand the new rules is likely to cost more than this estimate, let alone the costs of changes to systems, staff training costs and so on.¹¹

3.19 The submission also notes that the EM:

- 'ignores the cost impact on many hundreds of thousands of other small businesses, who will need advice' on the changes; and
- underestimates the ongoing costs for small to medium businesses (at \$33 per annum).¹²

Committee view

3.20 The committee notes that the EM provides both cost estimates and a relatively informative assessment of the impacts of the changes. The cost analysis is placed within a broader context of impact-group identification and discussion of the costs and benefits of the changes to individuals and employers (including small business), tax practitioners and other intermediaries, the Australian government and the Australian community. The committee received no evidence on which to base a finding that the compliance cost estimates are inaccurate.

10 Mercer, *Submission 2*, p. 3.

11 Mercer, *Submission 2*, p. 3.

12 Mercer, *Submission 2*, pp 3-4.

Consistency of income tests

3.21 Mercer's view was that the proposed changes will result in a 'complex web of different rules', making it difficult for individual taxpayers to understand the content and application of various income tests, and raising the likelihood that professional financial or tax advice will be required. The submission offers a number of examples of what it calls 'the vagueness of the legislation' and recommends that implementation of the changes be delayed to allow them to be considered as part of the Henry tax review.¹³

Committee view

3.22 The committee notes that the relative complexity of the tax and transfer system will be reduced by the proposed measures, such as by introducing common definitions across a range of income tests, and aligning the income tests and \$150 000 taxable income threshold for the dependency tax offset and family benefit payments. The use of the concept of 'capacity to influence', in the majority of cases, appears to be neither overly difficult to apply nor significantly likely to lead to inequitable outcomes.

Defined benefit funds

3.23 Mercer submitted that the bill makes little reference to how RESC relate to defined benefit funds, although its opinion was that the bill as written will apply to the employer sponsored portion of defined benefit arrangements. The submission states that, where a RESC does arise in relation to a defined benefit fund, the bill provides 'no method of calculation for such cases'.¹⁴ Given this and other complexities, Mercer's position is that defined benefit funds should be excluded from the new arrangements.

Committee view

3.24 The committee notes that the EM contains a significant discussion of how the concepts of RESC and 'capacity to influence' interact with defined benefit funds.¹⁵ An example is provided, which shows that, where a member of a defined benefit fund has the capacity to 'salary sacrifice' a member contribution, then the amount of any such contribution they have influenced to be paid (such that their assessable income is reduced) will be counted as RESC.

13 Mercer, *Submission 2*, p. 4.

14 Mercer, *Submission 2*, p. 7.

15 Tax Laws Amendment (2009 Measures No. 1) Bill, Explanatory Memorandum, p 55.

Time for implementation

3.25 Mercer was concerned that employers would struggle to implement the changes effectively by 1 July 2009 as is currently required (enabling payment summaries prepared after this date to reflect the changes). Mercer felt that the possibility of 'significant confusion' over the reforms, and the likely need for employers to obtain advice concerning the changes, would justify delaying the changes until 1 July 2010. It recommended a date not earlier than 1 July 2010 for implementation.

3.26 The Treasury submission observed that one of the main issues raised in consultations was the commencement date of the reforms, with software companies in particular concerned that there was not sufficient time to test and implement software changes.¹⁶ However, 'proposals to defer the commencement of the reforms were not accepted' because:

It is considered that the changes to the RESC definitions since the consultation draft [of the bill] have simplified the definition and mitigated the compliance costs for software companies.¹⁷

Committee view

3.27 The committee believes that there is sufficient time for the superannuation industry, and associated industries such as software developers, to comply with the changes to income tests proposed in the bill. The income test reforms were announced in May 2008, and were the subject of a Treasury consultation process in November and December 2008, giving the industry sufficient warning and opportunity to prepare for the transition to the new arrangements. Further, the changes—mainly involving the harmonisation of definitions used across a range of programmes—are not overly technical or complex, so as to require the delay of the scheme beyond July 1 2009.

3.28 The committee notes that the Australian Taxation Office will provide clear information about the new provisions, such that most small businesses will not be required to pay for advice about their liability.¹⁸

Recommendation

3.29 The committee recommends that the Senate pass the bill.

16 Department of the Treasury, *Submission 1*, p. 3.

17 Department of the Treasury, *Submission 1*, p. 4.

18 Department of the Treasury, *Submission 1a*, p. 2.

Senator Annette Hurley

Chair

