Coalition Senators' Dissenting Report

1.1 More than half the Gillard Government's promised surplus for 2012/13 is to be achieved through increased revenue from this, the *Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2012*.

1.2 Indeed, over the six months from 31 December 2012 to 30 June 2013, the Government intends to raise more than $760 million in additional revenue from measures in this Bill.

1.3 The 'lost super' measure alone (Schedule 4) is expected to raise $555 million, which on its own is more than half the promised $1.077 billion surplus for 2012-13.

1.4 The undue haste and lack of proper process followed in developing these measures is obviously driven by the Government's desperate and urgent need for more cash now to help keep the illusion of a surplus in 2012-13 alive for a bit longer.

1.5 If there was any doubt that the Government was in a rush, to get this legislation through to help plug its latest budget black hole, people need to look no further than at the transcript of the public hearing of this inquiry on 12 November 2012.

1.6 While there is some merit in some of the measures proposed, this is largely wiped out by the rushed, ill-considered and disorderly manner in which they are being pursued.

1.7 The interests of consumers – account holders in this context – should be the paramount consideration in terms of assessing the merits or otherwise of this Bill. The Parliament should not be rushed into making bad decisions just to respond to the desperate need for immediate additional cash for a Treasurer who, on the back of excessive spending, has already delivered four deficit budgets, with $172 billion of accumulated deficits, and who is manifestly on track to deliver his fifth budget deficit in a row.

1.8 In this context, any legitimate interests of, and challenges faced by, industry stakeholders (account providers) should also be respectfully taken into account.

1.9 Unnecessary costs and inefficiencies, which while imposed on account providers, will ultimately be borne by consumers, and as such should be avoided. The rushed nature of both the consideration of this Bill and its subsequent implementation are clearly likely to contribute to unnecessary mistakes, unintended consequences and increased costs and uncertainties. This would ultimately be to the disproportionate detriment of consumers as well as the industry.

1.10 The stated objectives are sound:

- to prevent erosion of small lost or inactive account balances (from fees and charges); and
- to reunite unclaimed balances with their owners.

1.11 However, the delivery of this Bill is poor, rushed and ill-considered. Moreover, the underlying motivation for this Bill and its haste is blatant and should not prevent the sound broader objectives of the Bill from being met.

1.12 Account providers (be they banks, super funds, insurance companies or other financial institutions), are having rushed and ill-considered measures imposed on them, without adequate warning or consultation, and without awareness and understanding of their current systems and processes, or any system and process limitations.

1.13 Based on the evidence, it is quite clear that account holders in certain specific, but not uncommon, circumstances have not been properly considered. And the scope of the accounts affected is not clearly defined or articulated.

1.14 These measures are the types that require in-depth consultation with the affected institutions beforehand, to ensure that what is being proposed is doable, hits the mark, and meshes in with what is being done in the industry already, with minimal unintended consequences.

1.15 In fact, on 13 November 2012 (just last week), the Assistant Treasurer in his Melbourne address to the CCH Corporate Tax Managers Network was touting the virtues of extensive consultation with industry and the community. He said:

> Consultation plays a vital role in Government decision making. In a complex area like tax law it is particularly valuable.
>
> When developing policy, consultation can assist the Government to understand the commercial and practical issues relevant to particular industries. This can provide the Government with a broad understanding of the options for reform. [1]

1.16 Proper consultation has clearly not occurred with this Bill.

1.17 Much of the law relating to these measures is to be included in the regulations to the various Acts. But these regulations have not yet been drafted. Account providing institutions affected by these proposed amendments will therefore have even less time to get across the changes and implement them (including updating systems and appropriately interacting with potentially affected account holders).

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1 http://assistant.treasurer.gov.au/DisplayDocs.aspx?doc=speeches/2012/012.htm&pageID=005&min=djba&Year=&DocType

1.18 Moreover, due to the concerns raised in submissions and the public hearing by industry groups – concerns which Coalition Senators agree need to be worked through – these regulations are likely to be even further delayed (compressing lead times even more).

1.19 Further, as interest is not payable by the Government on account balances deemed 'unclaimed' and transferred to Consolidated Revenue until 1 July 2013, it is reasonable to not rush the round-up of these balances to Consolidated Revenue, especially when the risks of unintended consequences are so high.

1.20 Given the number of problems raised concerning the legislation, the Coalition Senators of the Committee consider that the sensible decision would be for the Government to withdraw the legislation and undertake further consultation.

1.21 Failing that, the Coalition Senators consider that the implementation dates of Schedules 1, 2 and 4 should be delayed.

Schedule 1

1.22 This schedule amends from 7-years to 3-years the inactivity test for bank accounts in Section 69 of the Banking Act 1959 (Banking Act). After this period of inactivity, the amount in the account (the balance) is deemed to be 'unclaimed money' and will require the bank or financial institution providing the account (account provider) to transfer the balance to the Australian Government's Consolidated Revenue Fund (Consolidated Revenue).

1.23 Upon transfer to Consolidated Revenue, the Australian Government's revenue will be increased (by the amount transferred). If or when claimed, payment to the owner (or nominated account) will come from funds appropriated by Parliament for that purpose.

1.24 A number of concerns were raised about this reduction by 4-years in the inactivity test period, which Coalition Senators share and recommend should be addressed before this Bill is passed by the Parliament.

Delay implementation for at least 6-months (and preferably 12-months)

1.25 The timing of these changes is too rushed and unrealistic. As the Australian Bankers' Association testified in their submissions and at the public hearing before the Senate Economics Legislation Committee, the 31 December 2012 deadline to apply the new rules to inactive accounts (3-years instead of 7-years) is not feasible without unreasonable risks of mistakes, extra compliance costs and even a complete shut-down for a day or so near Christmas. This is not a position they want to be put in and would clearly expose their customers to unnecessary inconvenience.

1.26 Currently, banks do this testing annually well before the Christmas period. According to the evidence banks had completed this year's testing before the 22 October 2012 Mid-Year Economic and Fiscal Outlook (MYEFO) announcement.

1.27 Even though the transitional rules allow the reporting and transfer of the unclaimed money by 30 April 2013 (4-months later), the deeming of those account balances as unclaimed money is the most difficult part – it requires systems changes and appropriate interaction with their customers. This is to ensure specifically that all relevant customers who are likely to be captured by this dramatically shortened period are appropriately warned with reasonable notice.

1.28 In its submission to the inquiry, the Australian Bankers' Association noted that:

> …the proposed timing for implementation and a commencement of 31 December 2012 is unrealistic, being in less than 2 months and falling during a period when banks implement freezes on any technology or IT systems changes. It is estimated that banks and other ADIs will require at least 6 months to make all the necessary changes, inform customers in a legally compliant manner, and meet compliance requirements. It should be noted that individual banks and other ADIs will have different implementation issues.
>
> Therefore, the Australian Bankers' Association believes that a 12 month transitional period for compliance is appropriate to ensure the legal, technical and practical issues can be addressed and ensure that the new regime can be streamlined into the existing annual process without disrupting banks' systems or bank-customer relationships. If the Government is minded to make any changes to the existing unclaimed monies provisions, we consider that this transitional period is necessary for the following reasons:
>
> - Regulations are not made and are required to clarify the application of the new unclaimed monies provisions, including exclusion of certain account types and confirmation of inactivity period (which is created by the reduction in the unclaimed monies period);
> - Annual processes are already underway and should not be disrupted or required to be commenced again. Account identification and customer communications approaches should be streamlined and adjusted for the next compliance period;
> - Disclosure, contractual and other changes should not be prohibitive or cause legal interpretation issues for banks, including Code of Banking Practice, etc; and
> - Banks should not be required to implement intensive projects within tight timeframes and/or to allocate resources during technology and IT systems freezes. [2]

1.29 Further, the Australian Bankers' Association told the Committee that the Bill:

> … seems to have been developed and pushed through the parliamentary process with undue haste. While the changes in the legislation appear

2 ABA, *Submission 7*, p. 5.

> straightforward, they do in fact have significant implications for banks and for bank customers …
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> …
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> Given all of these complications with the bill, we suggest that more time is needed to work through the details and to allow banks and customers to adapt to the new requirements and to run the changes with next year's scheduled annual [unclaimed moneys] process.[3]

Inactivity test and what accounts are included

1.30 While inactivity of a bank account for 7-years is unusual, and is likely to be a good indicator in most circumstances that the holder is in effect 'lost' to the account, reducing the test to 3-years risks unintended consequences in many more circumstances. As such, Coalition Senators consider that this 4-year reduction is too drastic and that exclusions in certain circumstances (even discretions for account providers) are required to keep unintended consequences to a reasonable level.

3-years is too short

1.31 First, the 3-year inactivity test for bank accounts is too short and needs to be reviewed to consider whether 5-years would be a more appropriate duration.

- Australians being posted overseas (including their spouses) and intending to resume using their accounts when they return – this is often more than 3-years (but less than 5-years);
- Accounts owned by children (or set up for children to put their savings in) that do not make a contribution within 3-years; and
- In the case of First Home Saver Accounts (FHSAs), hard times can mean that contributions are not made for at least 3-years.

Many account types should be excluded

1.32 The new rules should only apply to accounts that earn very low (or zero) interest. These are typically at-call accounts. As such, internet accounts and term deposits (including those that rollover upon maturity) – both of which tend to earn significant interest – should be excluded. Otherwise, account holders will likely be disadvantaged by receiving a lower interest. This risk is borne out by the submission from the Commonwealth Bank of Australia (CBA):

> A high level analysis by CBA indicates that the majority of account balances at CBA which would be impacted by the proposed changes to unclaimed monies currently receive an interest rate higher than the CPI linked rate which the Bill proposes to be paid on those balances once transferred to unclaimed monies.[4]

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3 Mr Steven Münchenberg, Australian Bankers' Association, *Proof of Committee Hansard*, p. 7.

4 Commonwealth Bank of Australia, *Submission 13*, p. 2.

1.33 Also, linked accounts and offset accounts should be excluded too, so as not to disturb the customer's broader banking arrangements and strategy. Indeed, it is entirely conceivable that many Australians would have money sitting in an offset account against a loan on their principal place of residence. While there may be no activity in the account and no interest earned on any amount held in the account, this sort of common arrangement would help an account holder to reduce interest payable on their home loan in a tax-effective and entirely appropriate way. Yet under the legislation as it is currently drafted, such an offset account, with funds left in it to offset interest on a home loan account, could be captured by the Government and be transferred into Consolidated Revenue.

Inactivity should be tested at the account holder level

1.34 If an inactive account is held by a customer who has one or more active accounts with that bank (strongly suggesting the customer is still alive and engaged with the bank), then the balance in the inactive account should not be deemed 'unclaimed' and transferrable to Consolidated Revenue. As such, where a customer holds multiple accounts with the bank, the inactivity test should be elevated to the level of the customer, to help avoid unintended consequences

1.35 As ING Direct explained in its submission, the current requirement for banks and other financial institutions to consider activity on an account-by-account basis, as opposed to a single customer activity basis, will force ING Direct to:

> …advise active customers who regularly transact on some, but not all, of their accounts, that unless they transact on each of their deposit accounts at least once every 3 years we'll have to close them and pass the money to ASIC.
>
> The Terms and Conditions that apply to our savings accounts do not currently mandate that a customer must transact on their accounts at least once every three years. Making changes to our Terms and Conditions may lead to ASIC investigating us for misleading our customers. We would require an assurance from the Government that this would not be the case should the Committee pass the Amendment Bill in its present format.
>
> If, on the other hand, the Amendment Bill was passed taking a single customer view, we believe the majority of accounts would not be affected as most of our customers are active on at least one of their accounts.[5]

1.36 This will lead to extra inconvenience and compliance costs for both customer and institution.

1.37 According to a blog posted by The Hon Bernie Ripoll MP (Parliamentary Secretary to the Treasurer) on 14 November 2012, it is very easy to be caught by these rules:

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5 ING Direct, *Submission 11*, p. 2.

> One of the most common causes of lost accounts is people moving house and forgetting to update their address details with their bank or credit union. It is an easy thing to do.
>
> It is also easy to lose track if you change names, or if you live overseas for a time, change jobs, forget how many accounts you have, or forget to tell your loved ones about the accounts you do have.[6]

1.38 For those that have been shopping around with their banking in more recent times (encouraged by the Treasurer and Government), it would be even easier to have an account balance deemed 'unclaimed' and transferred to Consolidated Revenue.

Schedule 2

1.39 This schedule amends also from 7-years to 3-years the inactivity test in the First Home Saver Accounts Act 2008 (FHSA Act) for FSHAs held by FHSA providers under the FHSA Act.

1.40 Coalition Senators consider that this 4-year reduction also increases unreasonably the risks of unintended consequences.

- FHSA holders that face challenging times may not be able to make contributions for at least 3-years.

1.41 In its submission and at the hearing, the Australian Bankers' Association recommended that the FHSAs should be excluded, arguing that:

> …customers generally find these accounts and the restrictions and conditions confusing. Apply the unclaimed monies provisions would add additional complexity, especially given the 4 year qualifying rule. Similarly to fixed products [such as term facilities and deposits], we consider that any new unclaimed monies provisions should only apply to at-call account types which satisfy the definition for inactivity.'[7]

1.42 Regarding Schedule 1 and 2 in particular, Coalition Senators strongly consider that the proposed 3-year inactivity test for bank accounts be reviewed to consider whether 5-years would be a more appropriate duration. Also, that more consideration be given to the type of accounts tested, and whether the test should apply instead, or in effect, at the customer level.

1.43 Coalition Senators also strongly consider that the proposed amendments to Schedules 1 and 2 of this Bill be delayed for a full year (to 31 December 2013):

- To allow sufficient time for proper consultation, so the critical issues raised since the 2012-13 MYEFO announcement can be addressed and any changes implemented properly; and

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6 http://www.bernieripoll.com.au/blog/?p=78&utm_source=dlvr.it&utm_medium=twitter

7 ABA, *Submission 7*, p. 3.

- To ensure the changes can feed into banks' annual processes, which had largely been completed by the time of the MYEFO announcement.

Schedule 4

1.44 Schedule 4 to the Bill amends the Superannuation (Unclaimed Money and Lost Members) Act 1999 (SUMLM Act) to change the circumstances in which small lost member accounts and accounts of unidentifiable members must be transferred to the Australian Taxation Office (ATO), and to provide for the payment of CPI interest on unclaimed superannuation money.

1.45 The amendments will increase the account balance threshold below which accounts of lost members are required to be transferred to the ATO from $200 to $2000. The definition of a 'lost member' is set out in the Superannuation Industry (Supervision) Regulations 1994. The current regulations define a member of a fund as a lost member if:

> a) the member is uncontactable – that is, the provider has never had an address for the member, or two written communications to the member (or one written communication if the trustee so chooses) has been returned to the provider unclaimed; or
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> b) the member's account has not been active for 5-years.[8]

1.46 The policy rationale for this change is that transferring small lost member accounts to the ATO would protect these accounts from being eroded over time by fees and charges. As the Parliamentary Secretary to the Treasurer explained in his second reading speech, these fees and charges typically exceed average investment earnings on small accounts, even for accounts with $2000.[9]

1.47 The amendments will also decrease the period of inactivity before accounts of unidentifiable members must be transferred to the ATO from 5-years to 12-months. Accounts of unidentifiable members are accounts where the provider is satisfied 'that it will never be possible for the provider, having regard to information reasonably available to the provider, to pay an amount to the member.' These accounts, according to the Parliamentary Secretary's second reading speech, 'represent only a tiny proportion of superannuation—in fact, less than 0.1 per cent.'[10]

1.48 Coalition Senators accept the justification for increasing the $200 threshold for small account balances to $2000 – that this is around the level below which account erosion becomes likely. However, this tenfold increase to the threshold makes it much more critical that existing problems in the current regulations are resolved.

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8 Superannuation Industry (Supervision) Regulations 1994, Regulation 1.03A, http://www.comlaw.gov.au/Details/F2012C00564.

9 The Hon Bernie Ripoll MP, Parliamentary Secretary to the Treasurer, *Proof House of Representatives Hansard*, 30 October 2012, p. 54.

10 Explanatory Memorandum, p. 17.

Many of these problems appear not to have been considered while producing this Bill but will now be in real need of redress.

Update for modern communications

1.49 The 18-year old definition of 'lost member' – which can pivot on the member being 'uncontactable' by written communication (either no hard mail address or letters twice returned to sender/provider unclaimed) – is problematic and needs updating.

1.50 In the modern era, engagement with members can also occur through email, website, call centre and mobile phone. Through these means, members can give clear instructions to their super fund to continue to hold their account and balance. However, if hard mail communications have failed in the background, then the existing regulations require the account provider to deem the money in the account as lost and unclaimed, and have it transferred to Consolidated Revenue despite the clear intentions of the member. With the new $2000 threshold, such unintended consequences are likely to become unacceptably common.

Protection of active 'lost' accounts, minimum 2-year test, and reducing churn

1.51 Such deeming and transfer of money to the ATO and Consolidated Revenue can occur currently on the basis of two failed written communication attempts by the super fund, even when the 'lost' account is still receiving contributions, or recently received a rollover from the member.

1.52 In its submission, the Australian Institute of Superannuation Trustees notes that the problem of transferring such 'active' accounts to Consolidated Revenue is 'most likely to impact new employees, young people, and low-income earners' as these contributing members typically take the most time to accumulate account balances above $2000. For example, a member needs to earn over $22,222 in a 6-month period to receive contributions of $2000. Many people are on that income or below, and 6-months is long enough for two failed written communication attempts from a super fund to have occurred. Under the existing $200 threshold, only in very rare cases (ie tiny contributions) could *active* accounts be deemed lost and transferred undesirably to Consolidated Revenue. This illustrates how the tenfold increase to the threshold magnifies the existing problem with active 'lost' accounts, which will affect mainly new starters, the young and low-income earners.

1.53 To help guard against active accounts inadvertently being deemed 'lost' and their balances transferred, the Australian Institute of Superannuation Trustees and the Financial Services Council recommended that the regulations stipulate a minimum 2-year period of membership before a member can be treated as 'lost'. Moreover, that this 2-year clock is reset when the member account receives a contribution or rollover, or contact has occurred with the super fund (including via email, website, phone or call centre).

1.54 Further, if the member of an inactive account informs the super fund that he/she wishes to keep the account, albeit inactive, then it should be excluded from being deemed 'unclaimed money' and transferred to Consolidated Revenue.

1.55 The ICAA submission to the inquiry supports this view:

> We believe that the ability for members to continue to hold an inactive account is appropriate where the fund is able to provide them with information about their fund (ie provision of annual statements to a correct address) and/or that person proactively elects to be a member, albeit inactive. [11]

1.56 Such a 2-year threshold would also help prevent costly 'merry-go-round' of money or churn, which is bad for members and the industry. This can occur where an active 'lost member' account is closed and transferred, resulting in the next employer contribution triggering the creation of a new account and, in turn, the ATO being required to transfer the unclaimed money back to the new account. The Opposition considers this 2-year safeguard is most reasonable.

Cross-over with previously announced Super reforms

1.57 Super funds are currently doing their 'auto-consolidations' under the SuperStream reforms (due to be completed by 1 January 2014). The proposed amendments currently in the Unclaimed Money Bill operate on similar accounts but have to be processed by 31 December 2012 – in effect, a full year earlier. This cross-over, yet lack of alignment in timing, will create unnecessary difficulties for super funds (and unnecessary risks of mistakes and churn).

1.58 The Association of Superannuation Funds of Australia told the Committee that this overlap would likely lead to money transferred from super account providers to the ATO needing to be transferred back again under the proposed auto-consolidation process:

> We expect that quite a bit of the money flowing into unclaimed monies as a result of this measure will subsequently flow out as the ATO reunites those accounts with the members on the lost members register.[12]

1.59 This would seem to be a completely ridiculous situation which is manifestly not in the public interest.

1.60 In its submission, Mercer suggests a more efficient approach, than currently outlined in the Bill, would be to delay the measures in Schedule 4 and integrate these changes with the Government's account consolidation measures currently being developed.[13]

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11 ICAA, *Submission 9*, p. 2.

12 Mr Ross Clare, ASFA, *Proof of Committee Hansard*, p. 3.

13 Mercer, *Submission 5*, p. 5.

1.61 Without the desperate need for revenue this year, the timing of these overlapping processes could be, and manifestly would be, aligned – for the benefit of all stakeholders, and in particular, for Australians with up to $2,000 of super in one or a number of their accounts. The Government's desperate need for immediate additional cash is what is clearly driving the time table for this measure.

Loss of insurance coverage upon account balance transfer

1.62 Submissions from Association of Superannuation Funds of Australia and Australian Institute of Superannuation Trustees noted that lost members will also lose insurance coverage when their account balances are transferred to Consolidated Revenue. For accounts nearer to $2000, there is often sufficient money for insurance coverage to be maintained for many years. (The Association of Superannuation Funds of Australia submission notes that a 25-year old member in an industry fund may have $300,000 of life insurance cover for about $150 per annum.) This aspect has been made more critical by the tenfold increase to the threshold and the greater risk of active 'lost' accounts being unintentionally transferred. The solution to this issue is not straight forward and will need some consideration and consultation. (Simply excluding accounts with insurance attached may prevent too many accounts from being transferred to Consolidated Revenue.)

1.63 Association of Superannuation Funds of Australia told the Committee that a significant number of members could be affected by the loss of insurance coverage when their accounts are transferred to the ATO:

> Given the indications that we have—and the numbers are not entirely exact—up to 1.5 million accounts will be affected by the measure in the bill. Some of the indicators that we have suggest that up to one-third of those accounts might have active insurance. A considerable number of accounts will be closed as a result of the measure, including some active accounts which do not have alternative accounts and ones that are the only source of insurance coverage.[14]

2-year test for 'unidentifiable'

1.64 The reduction from 5-years to 12-months in the inactivity test for super accounts whose members are 'unidentifiable' (eg member's name, address and tax file number is missing) is very significant and quite possibly excessive. Given our recommendation that a minimum 2-year period for membership be introduced before a member can be treated as 'lost', it is recommended as more practical to align these two thresholds to allay confusion and save on compliance costs.

Aligning threshold for member protection of small amounts with new $2000 limit

1.65 Consideration should be given to aligning the current $1,000 threshold for member protection of small amounts (so these accounts don't go backwards or erode)

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14 Mr Ross Clare, ASFA, *Proof of Committee Hansard*, p. 6.

with the new $2000 limit. However, this could only happen in this Bill if the amendments are delayed to ensure consultation with industry and proper consideration is given to the merits of such an alignment. This would ensure industry is able to process these and all other changes in an orderly manner.

1.66 Notwithstanding the problems in the proposed amendments as drafted (or the underlying problems in the existing regulations that they accentuate), the Explanatory Memorandum to the Bill is deficient in key areas and needs further work and explanation.

1.67 The ICAA submission to the inquiry supports this view:

> We do not believe that that the current explanatory memorandum (EM) for the Bill adequately explains the operation of these measures. A person is able to hold a super account in which no contributions are made for greater than five years and ensure that the fund will not determine that it is a lost account. It is our understanding that in Example 4.2 of the EM, Poppy would not necessarily be categorised as lost member if her fund had within the last two years verified that her address was correct and had no reason to believe it was now incorrect, or Poppy had notified the fund of her wish to continue as a member. Examples such as this may explain some confusion as to the operation of the new measures. [15]

1.68 Regarding Schedule 4 in particular, Coalition Senators strongly consider that the proposed amendments to Schedule 4 of this Bill be delayed for a full year (to 31 December 2013) to address the critical issues raised since the announcement of this measure and to align the timing of their implementation with that of the auto-consolidation processes under the SuperStream reforms (due 1 January 2014).

Concluding Remarks

1.69 Coalition Senators are deeply concerned about the impact these amendments as currently proposed will have on account holders and providers in terms of the unintended consequences and the unnecessary extra churn and compliance costs that will occur.

1.70 Coalition Senators consider that the Government does not sufficiently appreciate the extent of many of the shortcomings of, and practical difficulties caused by, this Bill. If these shortcomings are not addressed, unreasonable unintended consequences, while completely unnecessary, are inevitable.

1.71 In summary, regarding bank accounts of customers, further consultation needs to take place to ensure:

- that banks and other financial institutions are not required to rush these changes in, exposing their customers to mistakes, inconvenience and

15 ICAA, *Submission 9*, p. 2.

unnecessary additional costs. It is entirely unreasonable to impose a requirement to have all the necessary deeming done by 31 December 2012, so that reporting to ASIC and payments to Consolidated Revenue can in turn occur by 30 April 2013, so that funds received by the Government can be processed in time for the 2012-13 financial year, solely to help the Government meet its wafer thin promise of a $1.077 billion surplus;

- that the proposed 3-year inactivity test for bank accounts be reviewed to consider whether 5-years would be a more appropriate duration;
- that only very low interest and ‘at-call’ accounts be tested for inactivity;
- that, where an account is found to be inactive, the inactivity test also be applied at the account holder (customer) level – to test if the holder has other accounts, at least one of which is active, that would suggest engagement is still intended; and
- that the amendments (including those to the associated regulations) and explanatory material be improved and made consistent with how the legislation is intended to work, before banks and other financial institutions are expected to implement the changes.

1.72 Regarding super accounts of members, further consultation needs to take place to ensure:

- that the 18-year old definition of 'uncontactable' be updated to take into account modern technology and communications, such that active super accounts are not inappropriately deemed 'lost', with their balance then having to be transferred to Consolidated Revenue;
- that active accounts (eg those receiving contributions or rollovers) cannot be deemed 'lost' within 2-years of their last contribution or rollover (as recommended by industry);
- that the proposed 12-month test for super accounts whose members are 'unidentifiable' be aligned with the minimum 2-year inactivity test (as recommended by industry);
- that the problem of loss of insurance attached to (especially active) accounts when the balance is transferred to Consolidated Revenue be properly considered and addressed (and not dismissed);
- that Super funds not be required to rush these changes, so as to report the results to the ATO by 31 December 2012, so payments to Consolidated Revenue can in turn occur in 2012-13, solely to help the Government meet effectively half of its forecast $1.1 billion surplus;
- that the cross-overs and synergies of these proposed super amendments with the previously announced SuperStream reforms (the auto-consolidation measures) that are due to be implemented by 1 January 2014 (a full year later) be given further time and consideration (as Treasury endeavours to do);

- that the amendments (including those to the associated regulations) and explanatory material be improved and made consistent with how the legislation is intended to work, before Super funds are expected to implement the changes; and
- that the threshold for member protection of small amounts (currently $1000) be considered for alignment with the new $2000 limit.

1.73 All these shortcomings can be addressed, given further consultation and amendment, to ensure that the sound objectives of reducing account balance erosion and reuniting these balances with their owners can occur with fewer inadvertent transfers to Consolidated Revenue and other unintended consequences.

1.74 Coalition members of the Committee make the following recommendations:

Recommendation 1

1.75 That the Government <u>withdraw</u> the Bill so that further consultation can occur on a range of issues, including:

a) Implementation dates of all schedules, with particular attention to Schedules 1, 2 and 4;

b) The most appropriate duration for the inactivity test for all schedules, with particular attention to Schedules 1, 2 and 4;

c) The need for the inactivity test to only apply to low or no interest accounts;

d) The need for the inactivity test to apply at the customer level, rather than the account level;

e) Reviewing the definition of 'uncontactable' as regards superannuation accounts; and

f) The problem of loss of insurance in superannuation accounts.

That the Explanatory Memorandum be improved and made consistent with how the legislation is intended to work.

That the revised Bill and associated regulations be developed and introduced well in advance of any new implementation dates.

Recommendation 2

1.76 If the Government does not withdraw the Bill, that the Bill be amended to delay implementation of:

a) Schedule 1 and 2 for a full year (to commence on 31 December 2013) to feed into the banks' annual processes that had largely been completed for this calendar year when the MYEFO announcement was made; and

b) Schedule 4 for a full year (to align with the deadline of the auto-consolidations necessary under the previously announced SuperStream reforms, which are due by 1 January 2014).

Senator Mathias Cormann
Shadow Assistant Treasure

Senator Alan Eggleston
Senator for Western Australia