The Senate

Economics Legislation Committee

Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2012 [Provisions]

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Abbreviations

ABA	Australian Bankers' Association
ADI	Authorised deposit-taking institution
AFA	Association of Financial Advisers
AIST	Australian Institute of Superannuation Trustees
ASFA	Association of Superannuation Funds of Australia
ASIC	Australian Securities and Investments Commission
ASIC Act	*Australian Securities and Investments Commission Act 2001*
ATO	Australian Taxation Office
Banking Act	*Banking Act 1959*
CBA	Commonwealth Bank of Australia
Corporations Act	*Corporations Act 2001*
CPI	Consumer Price Index
CUMSA	Companies and Unclaimed Monies Special Account
FHSA	First Home Saver Account
FHSA Act	*First Home Saver Accounts Act 2008*
FSC	Financial Services Council
ICAA	The Institute of Chartered Accounts in Australia
Life Insurance Act	*Life Insurance Act 1995*
MYEFO	Mid-Year Economic and Fiscal Outlook
SIS Regulations	*Superannuation Industry (Supervision) Regulations 1994*
SUMLM Act	*Superannuation (Unclaimed Money and Lost Members) Act 1999*

Chapter 1

Introduction and conduct of the Inquiry

1.1 On 1 November 2012, the Senate referred the provisions of the Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2012 for inquiry and report by 19 November 2012.

1.2 The Bill makes amendments to the *Banking Act 1959* (Banking Act), *First Home Saver Accounts Act 2008* (FHSA Act), *Life Insurance Act 1995* (Life Insurance Act), *Superannuation (Unclaimed Money and Lost Members) Act 1999* (SUMLM Act), *Australian Securities and Investments Commission Act 2001* (ASIC Act), and *Corporations Act 2001* (Corporations Act) to give effect to the unclaimed moneys measures announced in the 2012-13 Mid-Year Economic and Fiscal Outlook (MYEFO).

1.3 These measures include:

- reducing from seven years to three years the period of inactivity before bank accounts, First Home Saver Accounts (FHSAs) and life insurance moneys are treated as unclaimed and transferred to the Australian Securities and Investment Commission (ASIC);
- increasing the threshold below which small lost member superannuation accounts are required to be transferred to the Australian Tax Office (ATO) from $200 to $2000, where the account has been inactive for a period of five years or the member is uncontactable;
- reducing from five years to 12 months the period of inactivity before which the superannuation accounts of unidentifiable members are transferred to the ATO;
- providing for unclaimed moneys and proceeds from the sale of unclaimed properties under the Corporations Act transferred to ASIC to be recognised directly in the Commonwealth Consolidated Revenue Fund, rather than deposited and held for six years in the Companies and Unclaimed Monies Special Account (CUMSA), which will be closed; and
- providing for the payment of interest on unclaimed moneys from 1 July 2013, with the interest rate to be calculated according to regulations, with the intention being that the rate would be calculated in accordance with the Consumer Price Index (CPI).

Conduct of the inquiry

1.4 The committee advertised the inquiry on its website and in the *Australian* (7 November 2012), and wrote directly to a range of individuals and organisations inviting written submissions. The committee received 13 submissions, which are listed at Appendix 1.

1.5 The committee appointed a sub-committee, chaired by Senator Cameron, to conduct the hearing and prepare this report.

1.6 The sub-committee held a public hearing in Canberra on 12 November 2012. The names of witnesses who appeared at the hearing are at Appendix 2.

1.7 The sub-committee thanks all who contributed to the inquiry.

Background to this inquiry

1.8 The unclaimed money measures covered in the Bill were announced in the 2012-13 MYEFO.[1]

1.9 As described in greater detail in the next chapter, these measures are intended to help reunite people with their unclaimed money, while preserving the value of this money.

Financial impact

1.10 The measures in this Bill will result in estimated savings over the forward estimates of:

(a) $92.3 million from measures in Schedules 1, 2 and 3, which relate to bank accounts, FHSAs and life insurance monies;

(b) $675.2 million from measures in Schedule 4, which relates to superannuation; and

(c) $118.5 million from measures in Schedule 5, which relates to the holding and handling of unclaimed property (including unclaimed moneys) arising under the Corporations Act.[2]

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1 Australian Government, *Mid-Year Economic and Fiscal Outlook 2012-13*, pp. 10, 46, 277-78. Available at http://www.budget.gov.au/2012-13/content/myefo/download/2012-13_MYEFO.pdf.

2 Explanatory Memorandum, Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2012, p. 3.

Chapter 2

Overview of the Bill

2.1 As noted at the start of the preceding chapter, the Bill makes amendments to the Banking Act, FHSA Act, Life Insurance Act, SUMLM Act, ASIC Act and Corporations Act to give effect to the unclaimed moneys measures announced in the 2012-13 MYEFO.

2.2 The amendments in the Bill will commence the day after the Act receives the Royal Assent.

Schedules 1, 2 and 3 – Bank Accounts, First Home Saver Accounts and Life Insurance Policies

2.3 Schedules 1, 2 and 3 to the Bill amend, respectively, the Banking Act, the FHSA Act and the Life Insurance Act.

2.4 Under current arrangements, authorised deposit-taking institutions (ADIs) are required to transfer to ASIC bank account moneys where there has not been a deposit or withdrawal for seven years. FHSA providers are also required to transfer FHSA moneys to ASIC where the account has been inactive for seven years. Similarly, life insurance moneys must be transferred to ASIC within seven years of the money becoming payable (such as when a policy matures).

2.5 The amendments reduce from seven years to three years the period of inactivity before banks accounts, FHSAs and life insurance moneys are treated as unclaimed.

2.6 As a transitional measure, the Bill provides for an extension from 31 March 2013 to 30 April 2013 on the deadline for ADIs and life insurance providers to report on, and transfer to the Commonwealth, unclaimed bank account and life insurance moneys as at 31 December 2012.

2.7 As is currently the case, under the new arrangements details of unclaimed moneys will be published by ASIC and can be searched via the ASIC website. Owners of unclaimed moneys will continue to be able to lodge a claim for the return of their money at any time through funds appropriated by Parliament for that purpose.

2.8 According to the Treasury's submission to the inquiry, by bringing forward the time in which money is recognised under the relevant law as lost or unclaimed, and thereby bringing forward the time when details of this money is published in publicly searchable databases, the measures will help reunite people with their money sooner.[1]

2.9 Currently, no interest is payable on reclaimed moneys. The amendments will allow for the payment of interest on unclaimed moneys from 1 July 2013. The interest

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1 Department of the Treasury, *Submission 10*, p. 3.

rate will be determined by regulations, and is intended to be equivalent to CPI. This will ensure that unclaimed moneys maintain their real value.

Schedule 4 – Superannuation

2.10 Schedule 4 to the Bill amends the SUMLM Act to change the circumstances in which small lost member accounts and accounts of unidentifiable members must be transferred to the ATO, and to provide for the payment of CPI interest on unclaimed superannuation money.

2.11 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.

2.12 The definition of a 'lost member' is set out in the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations). 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

(b) the member's account has not been active for five years.[2]

2.13 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.[3]

2.14 The amendments will also decrease the period of inactivity before accounts of unidentifiable members must be transferred to the ATO from five 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.'[4] 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.'[5]

2.15 According to the Parliamentary Secretary, the reduced period of time for which an account of an unidentifiable member can be held will 'encourage funds to

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

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

4 Explanatory Memorandum, p. 17.

5 The Hon Bernie Ripoll MP, *Proof House of Representatives Hansard*, 30 October 2012, p. 54.

collect sufficient information to identify members during the period when contributions are being made.'[6]

2.16 As reported in a joint press release by the Minister for Financial Services and Superannuation, the Hon Bill Shorten MP, and the Assistant Treasurer, the Hon David Bradbury MP, the ATO already has in place a number of strategies to help reunite members with their lost superannuation accounts. ATO programs, such as SuperSeeker, helped to reunite people with around 1.1 million lost and unclaimed superannuation accounts worth $3.2 billion in 2011-12. This was the first time that the amount of lost and unclaimed super has declined over the course of a financial year, after reaching a peak of almost $21 billion as at 30 June 2011. However, there are still around 6.1 million lost and unclaimed accounts, with a value of around $17.7 billion.[7]

2.17 Currently, no interest is paid on unclaimed superannuation moneys. The Bill provides for the payment of interest on unclaimed superannuation from 1 July 2013. The interest rate will be determined by regulations, and is intended to be equivalent to the CPI. This is intended to preserve the value of unclaimed superannuation over time and further boost individuals' retirement savings.

Schedule 5 – Corporations

2.18 Schedule 5 of the Bill amends the Corporations Act and the ASIC Act to close CUMSA and establish new processes for the receipt and payment of unclaimed property (including unclaimed moneys) arising under the Corporations Act.

2.19 Currently, ASIC credits unclaimed moneys under the Corporations Act to CUMSA upon receipt. Similarly, other unclaimed property is sold or disposed of by ASIC, and the proceeds are credited to CUMSA. The funds are held in CUMSA for six years, after which the funds are debited and recognised in the Commonwealth Consolidated Revenue Fund.

2.20 The Bill will close CUMSA, and allow for unclaimed property to be recognised directly in the Consolidated Revenue Fund upon receipt by ASIC.

2.21 As is currently the case, claimants of unclaimed property will continue to be able to claim and receive the return of their property currently or previously held by ASIC on behalf of the Commonwealth.

2.22 Currently, no interest is paid on unclaimed property arising under the Corporations Act. The Bill provides for the payment of interest on unclaimed property from 1 July 2013. Once again, the interest rate will be determined by regulations, and is intended to be equivalent to CPI.

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6 The Hon Bernie Ripoll MP, *Proof House of Representatives Hansard*, 30 October 2012, p. 55.

7 The Hon Bill Shorten MP and the Hon David Bradbury MP, *Amount of Lost and Unclaimed Super Falls for the First Time*, 29 October 2012, http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2012/071.htm&pageID=003&min=brs&Year=&DocType=0.

Chapter 3

Views on the Bill

3.1 As noted in the preceding chapter, the Bill makes amendments which bring forward the time at which money is recognised under the relevant law as lost or unclaimed.

3.2 According to Treasury, the benefits from these amendments for consumers would be twofold. First, the amendments would, in effect, bring forward the time when details of unclaimed moneys are published in publicly searchable databases and the ATO can use its data matching resources 'to match more of these accounts with an active account the owner may have,' thereby helping reunite people with their money sooner.[1]

3.3 Second, the amendments would, Treasury argued, help to protect unclaimed moneys from erosion by inflation and fees and charges. Treasury provided a number of examples in its submission of how the amendments would protect unclaimed moneys, and pointed to several of these examples during the public hearing:

> Analysis that we have included in our submission points to the typical fees and charges and the typical earnings on small accounts. For example, a small [superannuation] account of $1,000 of someone who was 20 years old would have earnings, based on average industry earnings, of around $54 and would have fees of that same amount as a result of the member protection provisions but would have insurance charges of typically $116. That account would go backwards by $116 as opposed to if it were held as lost money, unclaimed moneys, with the tax office, where it could be expected to earn interest at CPI. … [A] 20-year-old with insurance … [paying] typical fees and charges and [receiving] typical earnings over a five-year-period could be around $700 better off [under the proposed arrangements, than if he or she were] having an inactive account eroded over that time.[2]

3.4 While several submissions questioned the timing and particulars of the Bill, submissions were generally supportive of its policy intent, and the potential benefits the amendments would provide for consumers. For instance, CHOICE suggested that, with the earlier transfer of unclaimed monies, 'the erosion of balances through fees, commission and adverse market movements is substantially reduced.' Furthermore, the payment of interest in accordance with CPI 'will ensure that the real value of the unclaimed money is preserved.'[3]

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1 Mr Paul Tilley, Treasury, *Proof Committee Hansard*, p. 17; and Treasury, *Submission 10*, p. 1.

2 Mr Paul Tilley, Treasury, *Proof Committee Hansard*, p. 17; and Treasury, *Submission 10*, p. 1.

3 CHOICE, *Submission 8*, p. 1.

Schedules 1, 2 and 3 – Bank Accounts, First Home Saver Accounts and Life Insurance Policies

The reduction of the inactivity period from seven to three years

3.5 As explained in the previous chapter, Schedules 1, 2 and 3 of the Bill amend the Banking Act, FHSA Act and Life Insurance Act to reduce the period of inactivity before bank accounts, FHSAs and life insurance moneys are treated as unclaimed from seven years to three.

3.6 Submissions from the Australian Bankers' Association (ABA), the Commonwealth Bank of Australia (CBA) and the Association of Financial Advisers (AFA) suggested three years was too short a period of inactivity to deem an account unclaimed, particularly given the growing number and type of accounts that customers intentionally leave inactive for extended periods.[4]

3.7 The committee also heard concerns that the shorter period of inactivity would increase the number of transfers of moneys that are not genuinely 'unclaimed' from ADIs to ASIC. These moneys would, in turn, need to be transferred back to the ADI, imposing unnecessary costs on both ADIs and the government. For instance, in its submission, CBA noted that the amendments would add to its costs, as more accounts needed to be transferred to ASIC and in turn recovered, with an attendant increase in customer enquiries throughout this process.[5]

3.8 Several banks and banking groups also suggested that customers would experience stress and inconvenience as a result of discovering that accounts they thought were still held by the ADI were in fact closed, and the ensuing process they would need to go through to reclaim their money.[6]

3.9 Several submissions also challenged the government's claim that owners of inactive accounts would be better off once the money in those accounts was transferred to ASIC. Abacus, for instance, refers to examples of accounts where the interest paid is higher than CPI.[7] Similarly, ING Direct reports that its basic savings account pays higher-than-CPI interest and does not charge fees.[8] An analysis by CBA, meanwhile, reported that the majority of account balances held by CBA that would be impacted by the amendments actually receive a higher-than-CPI rate of interest.[9]

3.10 AFA also suggested that some customers may have accounts where a higher rate of interest is dependent on an absence of transactions, so requiring a transaction in

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4 ABA, *Submission 7*, p. 2; CBA, *Submission 13*, p. 1; and AFA, *Submission 12*, p. 3.

5 CBA, *Submission 13*, p. 1.

6 Abacus, *Submission 2*, p. 3-4; CBA, *Submission 13*, p. 1; and Mr Steven Münchenberg, *Proof Committee Hansard*, p. 12.

7 Abacus, *Submission 2*, pp. 2-3.

8 ING Direct, *Submission 11*, pp. 1-2

9 CBA, *Submission 13*, p. 2.

such cases to avoid a transfer of the funds to the government will leave the customer worse off.[10]

Government response

3.11 However, Treasury explained that until an account was transferred to ASIC and entered into ASIC's online database as unclaimed money, there was no easy way for people to search for old accounts. The three year timeframe therefore enhanced the likelihood of unclaimed money being reunited with its owner:

> The data shows that if people are going to find unclaimed moneys, the shorter the period between when the account was last used and when it is found the more likely it is to be matched and actually returned to the rightful owner. So it is really about getting those accounts onto the ASIC register where it is publicly searchable sooner.[11]

3.12 Treasury's submission maintained that the typical unclaimed money owner will be financially better off as a result of the amendments. According to Treasury, the low balances of most unclaimed accounts indicates many of these accounts are likely to be transaction accounts, which typically attract negligible or zero interest. Moreover, life insurers do not pay interest on insurance policies. Further, even if unclaimed accounts are earning interest, this is likely to be insufficient to keep up with inflation in many cases, and interest earnings are normally subject to tax, whereas the government intends to introduce legislation in early 2013 to exempt the CPI interest paid against government-held unclaimed moneys from tax. Moreover, Treasury submitted that while 'interest rates on savings accounts can be higher, quoted rates often include time limited special offers that may only last for a few months before reverting to a lower rate.'[12]

3.13 Treasury also notes that fees can significantly erode inactive bank accounts, with many accounts having fees of between $2 and $6 a month.[13]

Exemption of certain account types

3.14 Submissions from ABA, Abacus and CBA recommended that certain types of accounts that are often intentionally left inactive should be exempted in part or in full from being considered 'unclaimed' after only three years of inactivity. Accounts referred to in this respect include first home saver accounts; term facilities and deposits, although submissions suggested the need here was simply to confirm that the current exclusion of such accounts from unclaimed money provisions would be maintained; youth accounts, which are often set up shortly after a child's birth, but then left inactive for a number of years; offset and redraw accounts; and linked accounts.[14]

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10 AFA, *Submission 12*, p. 3.

11 Mr Justin Douglas, Treasury, *Proof Committee Hansard*, p. 15.

12 Treasury, *Submission 10*, pp. 4-5, 13.

13 Treasury, *Submission 10*, p. 5.

14 ABA, *Submission 7*, pp. 2-3; CBA, *Submission 13*, p. 2; Abacus, Submission 2, pp. 6-8

3.15 Abacus also pointed out in its submission that if an account is inactive it must be transferred to ASIC even if the account holder has been in touch with the ADI and expressed a desire to maintain the account. To remove the possibility of such accounts being treated as unclaimed, Abacus suggested it would be 'sensible if the need to transfer an account where no transactions have been made was waived where an ADI has contacted the account holder and the account holder has confirmed that they wish to continue holding the account with the ADI.'[15]

3.16 Submissions from Abacus, ING Direct and CBA suggested that where a customer holds multiple accounts with an ADI, activity in one account should be sufficient to ensure all accounts are treated as 'active' and therefore not transferred to ASIC as unclaimed moneys.[16]

3.17 While ABA reiterated its concerns to the committee regarding the type of accounts that might be captured by the amendments, the ABA also reported to the committee that it had been in regular discussions with Treasury about the amendments generally and had found Treasury to be 'very good in seeking to understand the issues that have arisen'.[17]

Government response

3.18 Responding to concerns about the range of accounts that could be deemed unclaimed after three years of inactivity, Treasury emphasised that there is nothing in the current Bill that changes the long-standing definition of unclaimed moneys in the Banking Act.[18]

3.19 Moreover, as the Explanatory Memorandum indicates, regulations may be used to 'exclude certain accounts and deposits from being treated as unclaimed moneys.' Specifically, the Bill adds new subsections (in Schedule 1, item 4, proposed subsections 69(1B), 69(1C), 69(1D) and (69(1E)) to the Banking Act which, in effect, provide the necessary regulatory power to define if and when certain types of accounts and deposits are deemed 'unclaimed moneys.' This provides the government with the flexibility to exempt certain types of inactive accounts from being captured as ‘unclaimed money’ when it is considered necessary to do so.

Timeframe for implementation of amendments

3.20 Submissions from ABA, Abacus and banks were critical of the short timeframe for implementing the amendments.[19] As ABA put it:

> …the proposed implementation for this change does not allow sufficient time for banks to make the necessary changes to systems, procedures,

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

16 Abacus, *Submission 2*, p. 9; ING Direct, *Submission 11*, p. 2; CBA, *Submission 13*, p. 2.

17 Mr Steven Münchenberg, ABA, *Proof Committee Hansard*, p. 10.

18 Mr Justin Douglas, Treasury, *Proof Committee Hansard*, p. 16.

19 ABA, *Submission 7*, p. 5; Abacus, *Submission 2*, pp. 4-6; ING Direct, *Submission 11*, p. 3; and CBA, *Submission 13*, p. 1-2.

> processes, terms and conditions, customer communications and other documentation and other compliance requirements or to provide their customers with necessary communications about the new arrangements.'[20]

3.21 Abacus acknowledged in its submission that the normal deadline for ADIs to report and transfer unclaimed moneys as at 31 December will be extended by the Bill from 31 March 2013 to 30 April 2013. However, Abacus contended that this extra month for reporting and transferring unclaimed money is of little benefit to the ADIs its represents, as most 'of the activity around managing unclaimed monies and account transfers needs to be dealt with in the period prior to 31 December cut-off.' In particular, ADIs need to contact potentially affected account holders to inform them of the ADIs obligations to transfer inactive account funds. The difficulties of getting in touch with potentially affected members in a one month period (assuming the Bill is passed in late November), according to Abacus, is compounded by the fact that many account holders will be on holidays, and the change in the inactivity timeframe means five times as many account holders will need to be contacted this year than would usually be the case.[21]

3.22 The committee was also informed that banks freeze their IT systems in the lead up to the Christmas period to reduce the risk of system instability. As a result, it was argued that it would be difficult to implement the changes in the timeframe currently proposed. As ABA informed the committee:

> What we do … at this time of the year, is wind down and freeze any changes to those systems because any change to the system can cause disruptions if something goes wrong. The view the banks take is that, while we would not want that at any time of the year, particularly in the run-up to Christmas, we would not want to see, for example, payment systems problems.[22]

3.23 Abacus also suggested in its submission that the implementation challenge was likely to be particularly significant for smaller ADIs:

> …which do not typically have the capacity to rapidly implement and scale up the new processes needed to implement this sort of change. As a consequence, it is likely that it will simply not be possible to contact many affected account holders before the initial 31 December deadline, which also increases the likelihood of monies being transferred to ASIC which are not truly 'unclaimed.'[23]

3.24 The tight timeframe would, in Abacus' analysis, result in a higher level of unnecessary transfers of funds and this, in turn, would lead to a higher incidence of

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20 ABA, Submission 7, p. 1.

21 Abacus, *Submission 2*, p. 5.

22 Mr Steven Müchenberg, ABA, *Proof Committee Hansard*, p.7. Also see CBA, *Submission 13*, p. 1; and ING Direct, *Submission 11*, p. 1.

23 Abacus, *Submission 2*, p. 5.

double-handling of money as money is transferred to ASIC and then back to the ADI, at a cost to both the government and ADIs.[24]

3.25 Despite the implementation difficulties, the ABA conceded that these difficulties were not insurmountable. Rather, it would be a case of committing additional resources in order to implement the amendments in time. [25]

Government response

3.26 Treasury's submission points out that ADIs and life insurers already have systems in place to identify and transfer unclaimed moneys to ASIC; the amendments simply bring forward the relevant time period in which the transfers need to occur. [26] Treasury also told the committee that while banks and banking groups had expressed concerns regarding the timeframe for implementation, it believed that banks would ultimately be able to implement the changes in a timely manner.[27]

Schedule 4: Superannuation

Raising the threshold below which 'lost member' accounts are transferred to the ATO

3.27 As explained in the previous chapter, the Bill will increase the account balance threshold below which lost accounts are required to be transferred to the ATO from $200 to $2000, effective from 31 December 2012. A 'lost account' is one where the member is 'uncontactable,' as defined in the relevant regulations, or where the account has been inactive for a period of five years.

3.28 The increase in the threshold is intended to protect more small lost accounts from being eroded by fees and charges. As Treasury explained, an 'account up to an amount like $2,000, if it is an account that is not having contributions made to it, would typically be going backwards.'[28] This is because the fees and insurance premiums on smaller accounts represent a higher proportion of the account balance and will typically exceed any account earnings.[29]

3.29 In its submission, the Institute of Chartered Accountants in Australia (ICAA) welcomed the proposed increase in the threshold:

> At this level, meaningful amounts of retirement savings can still be protected from erosion through fees and also be eligible for earnings in the form of interest payments once amounts are with the ATO. We believe this is in the interests of members. It also provides a longer term view of the

24 Abacus, *Submission 2*, p. 5.

25 Mr Steven Müchenberg, ABA, *Proof Committee Hansard*, p.8-9.

26 Treasury, *Submission 10*, p. 6.

27 Mr Justin Douglas, Treasury, *Proof Committee Hansard*, p. 19.

28 Mr Paul Tilley, Treasury, *Proof Committee Hansard*, p. 13.

29 Mr Paul Tilley, Treasury, *Proof Committee Hansard*, p. 18; Treasury, *Submission 10*, pp. 7-8.

> super system whereby amounts protected now will lessen the impact of reliance on aged pension and government resources later. [30]

3.30 While supporting the policy intent of the measure, submissions from ASFA, the Australian Institute of Superannuation Trustees (AIST) and the Financial Services Council (FSC) suggested that the increase in the threshold would inadvertently increase the number of active accounts that needed to be transferred to the ATO. These submissions argued that lost member accounts that are still receiving contributions are, as Mercer put it in its submission, 'not lost in the true sense of the word, even though they technically satisfy the definition of lost members.' These submissions argue that the transfer of such accounts would not be consistent with the policy intent of the Bill, and 'will often work against the interests of members.'[31]

3.31 As AIST explained in its submission, the $200 threshold in effect limits the number of active 'lost member' accounts that need to be transferred to the ATO, as anyone earning over $2222 in a six month period would have received at least $200 in superannuation contributions in that period. As a result, an active account of anyone earning above $2222 within six months would not be eligible for transfer, even if mail is returned unclaimed within this period. In contrast, a member would need to earn over $22,222 in a six month period to receive contributions of $2000, and an active account of an 'uncontactable' member earning under this amount would therefore need to be transferred to the ATO.[32]

3.32 AIST also noted that the problem of transferring active accounts to the ATO is 'most likely to impact new employees, young people, and low-income earners.'[33]

3.33 AIST told the committee there were a number of scenarios wherein a member can be both uncontactable (and therefore deemed a 'lost member') and still have an active account:

> That can include a member not supplying their address to their super fund when they join; their employer not supplying a proper address to the super fund at the time the member joined the fund; the details provided to the super fund being incorrect; or the member having changed address and not having notified their superannuation fund.[34]

3.34 FSC added that as the regulations and Bill are currently written, it would be possible for a member to be deemed a 'lost member' and have their account transferred to the ATO 'within a matter of months of joining the fund or of moving house and changing their address without notifying the fund.'[35]

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

31 Mercer, *Submission 5*, p. 3.

32 AIST, *Submission 6*, p. 5.

33 AIST, *Submission 6*, p. 3.

34 Mr David Haynes, AIST, *Proof Committee Hansard*, p. 2.

35 Mr Blake Briggs, FSC, *Proof Committee Hansard*, p.2.

3.35 ASFA suggested that the increased transfer of active accounts would result in a 'merry-go-round' of money. For instance, an active 'lost member' account might be closed and the money transferred from the superannuation provider to the ATO. The next employer contribution would then trigger the creation of a new account with the provider and, after the new account was reported to the ATO on the Member Contribution Statement for the year, the ATO would need to transfer the unclaimed money back to the provider for deposit in the new account.[36]

3.36 To reduce the incidence of active accounts being deemed 'lost', the FSC suggested a minimum two year membership period before this can occur.[37] Similarly, AIST suggested that the regulations stipulate a minimum period of membership before an account can be deemed 'lost.'[38]

3.37 To prevent active accounts being transferred to the ATO, AIST recommended that the definition of 'lost member accounts' in regulation 1.03A(1)(a) of the SIS Regulations exclude accounts where there has been a contribution or rollover within the last two years.[39]

3.38 In its submission, AIST also argued that the returned mail trigger for deeming a member 'uncontactable' should be revised to reflect technological changes. For instance, it is currently the case that if a trustee has a member's phone number, and an outbound call to that number results in confirmation that it is the correct number, that member can still be considered 'uncontactable.' Specifically, AIST recommended that trustees be able to determine that an account of an 'uncontactable' member does not need to be transferred to the ATO where the member has had contact with the fund within a specified period, for example, by email or by contacting a call centre.[40]

3.39 Similarly, ASFA noted that the 'lost member' definition is around 20 years old. ASFA suggested that in an era where engagement with members is much broader than mailed communications, trustees should be able to recognise a broader range of ways in which members engage with the fund – for example, by accessing their account online or contacting a call centre. ASFA also emphasised that contact between a fund and members, particularly in the current day, is a two-way street: 'If a member makes contact with the fund, obviously they know which fund they are in and they are engaging with their membership.'[41]

Government response

3.40 Treasury told the committee that, in cases where a lost member account is still receiving contributions:

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36 ASFA, *Submission 1*, p. 6.

37 FSC, *Submission 4*, p. 3-4.

38 AIST, *Submission 6*, p. 6.

39 Mr David Haynes, AIST, *Proof Committee Hansard*, p. 2; and AIST, *Submission 6*, pp. 6-7. ASFA makes similar recommendation. ASFA, *Submission 1*, p. 9.

40 AIST, *Submission 6*, p. 6.

41 Ms Fiona Galbraith, ASFA, *Proof Committee Hansard*, p. 2.

> …in most circumstances that should give a reasonably good line of investigation for funds to be able to make contact with such members. If the member is actively making contributions then by pursuing a line of inquiry through, for example, the employer where those contributions are being made in most circumstances that should give a reasonable prospect of being able to make contact. It may be that under this measure with the increased threshold there is a greater incentive for funds to do that.[42]

3.41 Treasury told the committee that superannuation providers also had a number of other options for locating lost members, including for lost member accounts that remain active. Such steps might include checking the superannuation provider's own data to see if the member has other accounts with more current information, or engaging a company like Australia Post to undertake database searches to locate a member.[43]

Crossover with auto-consolidation measures

3.42 In its submission, ASFA noted that legislation is already being developed to implement an auto-consolidation of accounts process, which is proposed to commence from 1 January 2014. ASFA suggested that this auto-consolidation process, which is envisaged to apply to superannuation accounts of under $1,000, would generate much the same outcome as the unclaimed money process for accounts under $1000, but in an eight month longer timeframe.[44]

3.43 Mercer referred to the same issue in its submission, and suggested that greater efficiencies could be achieved by integrating the superannuation amendments in the Bill with the proposed legislation on the consolidation of accounts within and between superannuation funds. [45]

3.44 Treasury acknowledged that there will be some crossover between the superannuation measures in the Bill and the auto-consolidated measures being developed, and noted 'this is something that the government will need to give further consideration to'. [46]

Loss of insurance coverage

3.45 Submissions from ASFA and AIST noted that 'lost members' will lose insurance coverage when their accounts are transferred to the ATO. It is already the case that accounts transferred to the ATO lose any attached insurance coverage, but the $200 threshold limited the impact of this, as an account with less than $200 would be unlikely to have sufficient funds to pay for insurance premiums in any case. However, these submissions suggested that accounts nearer to $2000 often have

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42 Mr Paul Tilley, Treasury, *Proof Committee Hansard*, p. 14.

43 Ms Ruth Gabbitas, Treasury, *Proof Committee Hansard*, p. 18; and Treasury, *Submission 10*, pp. 8-9.

44 ASFA, *Submission 1*, p. 8.

45 Mercer, *Submission 5*, p. 5.

46 Mr Paul Tilley, Treasury, *Proof Committee Hansard*, p. 14.

sufficient money to maintain insurance coverage for a number of years. To illustrate the point, ASFA referred to the example of a 25 year old member in an industry fund, who might have $300,000 of life insurance cover at a cost around $150 a year.[47]

3.46 AFA and Mercer also suggested that inactive accounts might be at risk of losing insurance, even in situations where a member has made a decision to retain an inactive account in order to maintain insurance coverage. As AFA explained:

> This is a deliberate strategy, where the existing insurance is better than the alternative. In this case, the member might top up the fund from time to time to ensure that there [are] sufficient funds to pay the insurance. It is possible that at the end of a 5 year period, where there have been no further contributions, the balance has fallen to under $2,000. There is a genuine risk that this legislation might lead to superannuation fund members losing insurance that they intentionally held via an account that does not receive regular contributions.[48]

3.47 ASFA suggests that accounts with insurance should not be transferred to the ATO. However, ASFA argued that if accounts are transferred, consideration should be given to providing trustees with statutory protection so they are not liable where members lose insurance coverage.[49]

3.48 In its submission, Treasury noted that cancellation of insurance coverage already occurs in a number of superannuation funds when account balances fall below a certain threshold or when accounts are transferred to an eligible rollover fund. Treasury also noted that individuals who are still employed are likely to have another active account with insurance attached.

Transfer of 'unidentifiable' members

3.49 As outlined in chapter two, the Bill reduces the period of inactivity before accounts of unidentifiable members must be transferred to the ATO from five years to 12 months. As is currently the case, for 'unidentifiable' members the superannuation provider must be 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.[50]

3.50 AFA contended in its submission that 'unidentifiable' accounts are more likely to be returned to the member when held by the superannuation fund. On this basis, it argued that it would be preferable to maintain the current arrangement where the money remains with the superannuation fund for five years.[51]

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47 Treasury, *Submission 10*, p. 8.

48 AFA, *Submission 12*, p. 3; Mercer, *Submission 5*, p. 4.

49 ASFA, *Submission 12*, p. 9.

50 Explanatory Memorandum, p. 17.

51 AFA, *Submission 12*, p. 3.

3.51 However, Treasury argued that if a super fund had determined that it will never be possibly to identify a member after one year, then this is likely to still be the case after five years.[52]

3.52 Treasury also told the committee that there had been a great deal of confusion regarding the distinction between the amendments affecting small 'lost member' accounts and the amendments affecting the treatment of 'unidentifiable' members. Treasury outlined the difference between these two components for the committee:

> For small lost accounts that are inactive for five years or uncontactable, the threshold is being increased to $2,000, but there is no decrease in the period of inactivity for inactive small accounts. That stays at five years. Those small lost accounts represent the vast majority of accounts covered by the measure. The second component of the measure was for unidentifiable accounts. For that small proportion of accounts, the period of inactivity is being decreased from five years to one year. As we have pointed out in our submission—and it is also in the minister's press release of 29 October—those accounts represent less than 0.1 per cent of superannuation.[53]

3.53 AIST made a similar point, noting that the meaning of 'unidentifiable' accounts was often misunderstood. Moreover, in contrast to AFA, AIST told the committee that 'funds really have no business hanging on to superannuation contributions where they do not know and cannot find out who the rightful owner of that superannuation is.' AIST further suggested that the one-year period for transferring moneys from unidentifiable member accounts was appropriate.[54]

Committee View

3.54 The committee believes the amendments given effect by the Bill will be of significant benefit to consumers. The amendments will help reunite people with their unclaimed money sooner, and will protect the real value of that money while it remains unclaimed.

Bank accounts, FHSAs and life insurance policies

3.55 The committee acknowledges concerns expressed by a number of ADIs that the reduction in the period of inactivity before accounts are treated as unclaimed could potentially lead to moneys that are not genuinely unclaimed being treated as such.

3.56 However, the committee also notes that the Bill provides for regulations to be implemented which would exclude certain accounts and deposits for being treated as unclaimed moneys, where it was considered necessary to do so. This provides an appropriate measure of flexibility to address the concerns of financial institutions and protect the interests of consumers as required. The committee further notes that Treasury has been in regular contact with representatives of the banking industry, and

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52 Mr Paul Tilley, Treasury, *Proof Committee Hansard*, p. 15.

53 Mr Paul Tilley, Treasury, *Proof Committee Hansard*, p. 17.

54 Mr David Haynes, AIST, *Proof Committee Hansard*, p. 5.

these industry representatives have expressed satisfaction with Treasury's efforts to understand and address industry concerns.

3.57 The committee is confident that, on balance, owners of unclaimed moneys will be better off as a result of the amendments. In particular, the amendments will increase the likelihood of people being reunited with their money sooner, and will protect that money from erosion through fees, charges and inflation while it remains unclaimed.

3.58 The committee also acknowledges that some financial institutions are concerned about the implementation timeframe for the amendments. However, the committee is reassured by suggestions from the banking industry and Treasury that the challenges of implementing the amendments in the timeframe envisaged in the Bill are manageable, provided sufficient resources are allocated to the task.

Superannuation

3.59 The committee notes concerns expressed by the superannuation industry that the increase in the threshold below which lost member accounts are required to be transferred to the ATO could potentially result in the transfer of active 'lost member' accounts, which would be inconsistent with the policy intent of the Bill.

3.60 The committee is reassured by Treasury's advice that, in instances where an active account holder is 'uncontactable,' the superannuation provider would have a reasonably good line of inquiry to contact the member, particularly via the employer who is making contributions for the account holder. The committee also believes that the amendments will provide funds with a stronger incentive to make this contact.

3.61 The committee believes there has been an unfortunate degree of confusion between 'lost member' accounts (including 'uncontactable' members) and 'unidentifiable' members, which has led some commentators to incorrectly suggest that all unclaimed or inactive superannuation accounts must be transferred to the ATO within 12 months under the proposed amendments. The committee emphasises the point made by several parties during the inquiry, namely that only that very small proportion of accounts where the provider is satisfied it will never be possible for it to pay an amount to the member are considered 'unidentifiable' under the legislation.

3.62 The committee believes it is entirely appropriate that unidentifiable member accounts are transferred to the ATO sooner rather than later.

Recommendation 1

The committee recommends that the Bill be passed.

Senator Doug Cameron

Subcommittee Chair

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 …
>
> …
>
> 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
>
> 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

APPENDIX 1

Submissions received

Submission Number	Submitter
1	Association of Superannuation Funds of Australia
2	Abacus - Australian Mutuals
3	Community and Public Sector Union - State Public Services Federation
4	Financial Services Council
5	Mercer (Australia) Pty Ltd
6	Australian Institute of Superannuation Trustees
7	Australian Bankers' Association
8	CHOICE
9	The Institute of Chartered Accountants in Australia
10	Treasury
11	ING Direct
12	Association of Financial Advisers Ltd
13	Commonwealth Bank of Australia

Additional information received

- Answers to written Questions on Notice, received from Treasury on 16 November 2012.

APPENDIX 2

Public Hearings and Witnesses

CANBERRA, 12 NOVEMBER 2012

BRIGGS, Mr Blake, Senior Policy Manager, Financial Services Council

CLARE, Mr Ross William, Director of Research, Association of Superannuation Funds of Australia

DOUGLAS, Mr Justin, Principal Adviser, Financial Systems Division, Treasury

GABBITAS, Ms Ruth, Manager, Contributions and Accumulations Unit, Personal and Retirement Income Division, Treasury

GALBRAITH, Ms Fiona, Acting General Manger, Policy and Industry Practice, Association of Superannuation Funds of Australia

HAYNES, Mr David Ernest, Project Director, Australian Institute of Superannuation Trustees

MUNCHENBERG, Mr Steven, Chief Executive Officer, Australian Bankers' Association Inc.

PETERSON, Mr Brett, Assistant Deputy Commissioner, Superannuation, Australian Taxation Office

ROGERS, Mr Scott, Manager, Corporate Reporting and Accountability Unit, Corporations and Capital Markets Division, Treasury

TATE, Ms Diane, Director, Consumer Policy and Strategy, Australian Bankers' Association Inc.

TILLEY, Mr Paul, General Manager, Personal and Retirement Income Division, Treasury