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STANDING COMMITTEE ON ECONOMICS

**Reference: Superannuation (Departing Australia Superannuation Payments Tax)
Amendment Bill 2008; Temporary Residents' Superannuation Legislation
Amendment Bill 2008**

MONDAY, 3 NOVEMBER 2008

SYDNEY

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**SENATE STANDING COMMITTEE ON
ECONOMICS**

Monday, 3 November 2008

Members: Senator Hurley (*Chair*), Senator Eggleston (*Deputy Chair*) and Senators Bushby, Cameron, Furner, Joyce, Pratt and Xenophon

Participating members: Senators Abetz, Adams, Arbib, Barnett, Bernardi, Bilyk, Birmingham, Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cash, Colbeck, Collins, Coonan, Cormann, Crossin, Ellison, Farrell, Feeney, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Hanson-Young, Hefernan, Humphries, Hutchins, Johnston, Joyce, Kroger, Ludlam, Lundy, Ian Macdonald, Marshall, Mason, McEwen, McGauran, McLucas, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Trood, Williams, Wortley and Xenophon

Senators in attendance: Senators Bushby, Hurley, Joyce, Xenophon

Terms of reference for the inquiry:

To inquire into and report on:

Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2008; Temporary Residents' Superannuation Legislation Amendment Bill 2008

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Committee met at 9.58 am

CHAIR (Senator Hurley)—I declare open this meeting of the Senate Standing Committee on Economics' inquiry into the Temporary Residents' Superannuation Legislation Amendment Bill 2008. On 25 September 2008 the Senate referred this inquiry to this committee for a report by 20 November 2008. The bill provides that after a temporary resident ceases to hold a temporary visa, leaves Australia and at least six months expires, the unclaimed superannuation will be paid to the government. However, departed residents can claim back their money from the government at any time.

These are public proceedings, although the committee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may of course also be made at any other time. Mobile phones should be switched off or turned to silent.

[9.59 am]

FAUVET, Mr John, Partner, PricewaterhouseCoopers

CHAIR—Welcome. Your submission is confidential, as I understand it.

Mr Fauvet—It was marked confidential, but there is nothing particularly confidential in it.

CHAIR—Right, so we can refer to it.

Mr Fauvet—Absolutely.

CHAIR—And you are happy to at least begin evidence as a public hearing?

Mr Fauvet—Absolutely. There is nothing in the submission that we wish to hide from anybody or that is in the least bit confidential.

CHAIR—Is it all right then for it to be made public evidence and to put it on the committee's website?

Mr Fauvet—Absolutely.

CHAIR—Do you have an opening statement?

Mr Fauvet—I do. Firstly, thank you for the opportunity to give evidence. Secondly, just by way of introduction, I am a tax partner at PricewaterhouseCoopers in our international assignment solutions area, which means that we deal with tax and superannuation and related matters for inbound and outbound individuals and their employers. In preparation for this, I did a little bit of research into just how many returns we do for inbound and outbound individuals, and this year's count is 5,000. Lots of those will be outbound Australians and lots will be inbound, temporary residents, which of course is the subject matter before us. We are reasonably well placed to not just give our own views, but give the views of—not that we have inquired of any particular clients, but we can take a pretty good guess at what their views on the subject matter are. So we are very well placed, I think, to give comment on the legislation.

The first issue that gives us most concern is the retrospective aspect of it. Just to be clear about that, this legislation as currently written will impose a 35 per cent tax on superannuation of individuals claiming that superannuation at retirement age, even if they left here in 1993 well before retirement age. We do not have, and I cannot imagine that our clients have, any great concern with people paying tax on early access to super—why should you be able to access your super early and not pay some sort of catch up tax? We do not have any issue at all with all of those people who left in 1993 who have got \$300 in super and that being treated as lost super. We do not have any problem with that at all. It is just really a question of the rate and of the retrospective nature that applies to those individuals who are serious savers for their retirement, who were encouraged to do so—aren't we all—all of the time when they were here. This may well have been the only opportunity they had to save for their retirement, so they did that based on the then current legislation, expecting to be able to withdraw that superannuation in the same way as Australians can: tax free at age 60. Now you cannot do that. Sorry, I will get on to situations where you can do that, but generally speaking you cannot do that. That is retrospective taxation of—I was going to say of the worst kind, but it is not good.

If I were affected by that, I would be outraged. I think anybody would be. You put 100 grand into super, let us say, you are expecting to get 85 grand out after your contributions tax, and somebody is going to charge you another 25 grand 20 years after you have left. It is uncomfortable, and that is in direct conflict—absolute conflict—with many other policies that we have. We are trying to make it easy and pleasant for skilled workers to come here. We are not going to do that if we are going to impose an enormous rate of tax on their superannuation. Three years ago, I think, we introduced an excellent regime for taxing the foreign income of temporary residents—that is, we would not tax it at all. Absolutely great. Probably market leading in the western world. The UK has something similar, but not as good. So it turned this jurisdiction from being an almost evil jurisdiction for tax for foreigners, in their eyes, to being something altogether better. We laid down the welcome mat, if you like. Now we are pulling the rug from underneath people's feet.

Not that I have had any conversations with clients yet, because it is not law, but I would be almost certain they will be very disenchanted because it is just contradictory to welcome people in the first place by having good laws about income tax and then taxing their superannuation at a combined rate of effectively 45 per cent. So many people will pay tax at a higher rate on their superannuation than on their income. Surely that is not the intention. I did not read anything anywhere that said that was the intention, but that is the outcome, which I suggest is unfortunate. If this is going to be passed, then to get rid of the retrospective effects it would be a

pretty easy fix to say it only applies to people who enter Australia after the date of effect. It could be fixed fairly simply so it did not have that onerous retrospective effect.

Some of the rationale for this was given earlier as, 'Well, in certain other jurisdictions you have to pay social security and you can't get that back, so at least you can get your super back so why shouldn't we tax it a bit.' That is just not a valid comparison. You cannot compare—you can, but it is wrong—Australian super with foreign social security. Foreign social security is just a tax that goes into the general pool. It is a bit like the Medicare levy, if you like. So the right thing to do, if you were going to make an international comparison, would be to compare our superannuation regime with other people's superannuation regime—not with their social security regime. No other major jurisdiction that we looked at taxes their temporary residents worse than their residents in their equivalent superannuation regimes. So once again that puts us out on a limb, and not a good limb to be out on internationally.

Administration: we cannot quite get our heads around just how the admin of this is going to work. As I said earlier, it affects anybody who was a temporary resident who paid superannuation from when superannuation was introduced and who has left—so since 1992. That is an awful lot of people who have come and gone since then. So somehow or other, the department of immigration are going to tell the ATO, the ATO are going to do some sort of data-matching exercise with the tax file numbers and the super fund holding that tax file number—I would be surprised if this worked effectively and efficiently. I do not see how the mechanics are there to do that. Somebody who leaves today, fine, because this is a current record, but we are going back almost 20 years. I am worried about the equality. I think this is going to be a bit hit and miss. If this goes through, I think somebody who left in 1993 who has their super in some retail fund might get away with it because the interesting thing in the way this is currently written is it is only when the money goes from the super fund to the ATO that, when you retire, you are going to have your 35 per cent DASP. If it is still in the super fund, bizarrely, there is no DASP; it is just nought, as if you are an Australian. So we have this sort of situation: somebody who is 60 today, leaving Australia, goes to their super fund, can get their super out tax free. If, on the other hand, they go back to whence they came, think about it in a year, come to the super fund for it in a year, the super fund will tell them: 'We haven't got it any more. The ATO have got it.' They go to the ATO and have 35 per cent tax withheld. If it is with a super fund, it is fine; if it has gone to the ATO, you have dipped out. Surely that cannot be right, and I suggest that is not what is intended either.

We have an observation on the consultation process. There were 47 submissions originally. I have not digested them all, but the content of those I suspect—and it has been stated thus—was pretty much along the lines I have said: it is retrospective legislation, which is not good; the rate of tax on people's superannuation should not be greater than the rate of tax on their other income; and administratively this is going to be difficult. Not many of the points made in those 47 submissions seem to have got through to the legislation, which makes us worry about just how that consultation process worked. I cannot see a great deal of point in asking for submissions and then ignoring most of them. It does not sit comfortably as a good process.

In summary, we do not have a problem with lost super being claimed and we do not have a problem with there being tax on early withdrawal of super but we do have a problem with the rate of tax being applied to that and we have a big problem with the retrospective aspect of this legislation as it stands.

CHAIR—You said you had something like 5,000 clients who might be affected. When serious savers who have accountancy advice leave surely they are going to manage their funds. There is no impediment to them rolling over that fund they have into another account or other investments? How serious an issue is this going to be? The account has to have been inactive.

Mr Fauvet—It depends on the type of individual and the quantum. I think we said in our submission somewhere that we like to differentiate between serious savers and other people who are here for a short period of time and have a small amount of money in super.

Senator XENOPHON—Who would you define as a 'serious saver'? What is the threshold for a serious saver?

Mr Fauvet—We have suggested in here that having \$10,000 in super probably means that you are. Mind you, we only put that number there because if you were going to draw that distinction you have to put a number somewhere. If I were a backpacker—and this applies equally to backpackers as it does to senior executives—and I had \$2,000 in super, I would probably think that was quite a lot and I were serious saver and I should not be held to a 45 per cent rate on that super. If you put \$100 in, there is a 15 per cent contributions tax and a 35 per cent DASP on the \$85 that is left, so it comes out at basically 45 per cent. As a

backpackers I might be paying tax at an average rate of 20 per cent on the income from whatever activities I do—grape picking and the like—and 45 per cent on my super.

CHAIR—But that is only if you do not roll it over into a fund in your home country.

Mr Fauvet—I cannot do that. I would love people to be able to. It works the other way of course. You can roll foreign super into Australian super; you cannot do it the other way.

Senator XENOPHON—Anywhere?

Mr Fauvet—You cannot roll Australian super out to a foreign fund.

Senator BUSHBY—Is that because of Australian laws?

Mr Fauvet—Yes.

Senator BUSHBY—But there are no laws in other countries that have a similar effect if their residents try to roll super into our super funds? That is a broad question.

Mr Fauvet—Strangely, you can. The UK will allow you to transfer your UK super into Australia. There is a whole lot of rigmarole around it, but it can be done. It can be extremely effective too. They are the only jurisdiction I have come across that will allow you to do that. In most jurisdictions it is a ring-fenced thing, as it is for us. I do not have a problem with that either. I would love people to be able to roll it out, but there is no current ability to do that.

CHAIR—I take that point, but if you actively manage that fund, and it is not a lost fund, you can leave it until you are 60 and then take it out.

Mr Fauvet—You can, but you will still pay the 35 per cent DASP.

CHAIR—If it goes to the ATO.

Mr Fauvet—Correct.

CHAIR—But what if it does not?

Mr Fauvet—It will go to the ATO if the process works. DIAC will tell the ATO that Joe Bloggs has left. The ATO will data-match his TFN with the super fund—and there is a whole process for this in the legislation—and say, ‘Please give us the money.’ The ATO will then get the money and sit on it. I do not have a problem with that either, but I do have a problem with the fact that, when you call for it, if you are at retirement age you will pay the 35 per cent tax—which you and I are not going to do. We all invest in the same regime, but people who leave Australia and who are not Australian citizens or permanent residents get severely disadvantaged, like for like.

Senator XENOPHON—But if they advise their super fund of their new address, that does not apply, does it?

Mr Fauvet—It will not then be lost super, but it will still be within this 35 per cent regime.

Senator BUSHBY—In that circumstance, will it still go to the ATO?

Mr Fauvet—Yes.

Senator BUSHBY—I am not across the bill as much as I should be—and I do not think any of us are—but if it is passed, six months after you leave Australia, regardless of how actively you choose to manage your super back in Australia or how much contact you maintain with the fund that is holding your funds, the ATO will be entitled to take your super and put it into its pot?

Mr Fauvet—Correct. I do not blame you for not being across the detail, because there is an awful lot of it. People like me spend many happy hours trying to figure out exactly how this stuff works. I can tell you that I do not believe it works the way it is intended to or, if it does, it is in conflict with other policies and it gives rise to lots of retrospective taxation.

Senator BUSHBY—If a UK resident comes out here on a temporary visa to work for a short period of time, maybe a couple of years, and rolls his UK superannuation into an Australian fund—and has a substantial amount in it and adds to it while he is here—and then goes back to the UK, what would happen to the funds that he has managed in Australia?

Mr Fauvet—Firstly, you would never be advised to transfer your UK super to an Australian fund issue unless you are sure that you are going to retire here. There would be a dramatic effect, from a UK perspective, of coming back to the UK, having transferred your super out to Australia to start with. I am pretty comfortable

that all of the normal contributions would be taxed at 35 per cent but I am not sure that the other contributions would not be taxed at 45 per cent. You can see that there are two rates in there—35 per cent and 45 per cent. Anyway, it would not be a good result and you would be ill-advised to do that.

Senator BUSHBY—The proposed legislation may impact on the funds that you bring with you in addition to what you might get under the superannuation guarantee?

Mr Fauvet—It certainly would.

Senator BUSHBY—That is probably an extreme example, but it highlights a potential outcome of the legislation.

Mr Fauvet—We used to have here the worst superannuation regime imaginable until 1 July 2007 when, all of a sudden, it became great. We went from the worst to probably the world's best. I cannot think of any other better regime. It is state of the art. But this is a retrospective step, I would suggest.

Senator BUSHBY—You mentioned that your main objection was the retrospective aspect of it, particularly as it applies to people who are over retirement age. There has been a lot of consultation on this, and you have made some comments about the consultation and the extent to which it has been listened to, but was the increase in the taxation level part of the consultation? I think you suggest here that it was not and that the first you heard of it was when you saw it in the bill—is that correct?

Mr Fauvet—Sorry; I am not quite sure of your point.

Senator BUSHBY—You say here that the bill is proposed to tax any benefits paid by the commissioner as DASPs at increased rates and then you say—

Mr Fauvet—Yes, I am with you.

Senator BUSHBY—Was there consultation on that particular aspect as well?

Mr Fauvet—Well, not specifically. The rate used to be 30—which was, obviously, five per cent less than 35. So the increase to 35 really tips the balance to people paying more—to paying a higher rate of tax on their super than on their other income, by a greater amount, obviously, than would otherwise have been the case. We did not think it was great otherwise. I mean, it is fine for people who are earning hundreds of thousands of dollars; then, obviously, their marginal rate is 46½ per cent so, if they are accessing their super early, why not tax it as income at 46½ per cent? I do not have a problem with that. But if I am not earning hundreds of thousands but am only earning tens of thousands and my average rate of tax is 20 or 25 per cent and I am paying 45 per cent on my super, it is not a good outcome.

We have a super guarantee regime in this jurisdiction which is all-encompassing. There are almost no exceptions. So—excuse me for digressing for one second—if I come here from France, because my French employer thinks it would be a good idea to look at some business opportunities here, am here for three months, go back and never set foot here again, am I in the super guarantee regime? You bet your life I am. So my French employer has to find a default fund and go through the whole rigmarole, just the same as any other Australian employer—for somebody whose income, by the way, is outside the net. But they still have to pay super. So we force temporary residents into the super regime, no matter how much they earn or how long they are here for, and then we effectively force them out, and we charge them a premium for the privilege.

Senator BUSHBY—It is an interesting scenario, I agree. I want to ask some specific questions now. You talk about opting out, and you use the \$10,000 figure as a suggested level. What would opting out involve? Are you saying, 'Opt out from your money going to the ATO'?

Mr Fauvet—Yes.

Senator BUSHBY—So it sort of comes back to this: those people who do know that they have some money here and are quite comfortable with it staying where it is can say: 'I'd like to leave mine in that super fund; I understand that it might be eaten away by fees or that during the global financial crisis it might actually become less than \$10,000, but I am happy to leave it there.'

Mr Fauvet—Yes, it is an amusing concept that it might do better sitting with the ATO than sitting in a retail fund.

Senator BUSHBY—Well certainly, at the moment, that is quite possible. You suggest the level of \$10,000, but why have a limit? If people know the money is there and they are comfortable with that and they are in contact with their super funds so it is not lost, why not allow anybody who is in that situation to opt out, whether they be a backpacker or a highly-paid executive? I am just asking, for the record, for your view.

Mr Fauvet—I am very happy for everybody to opt out, but I think it has to be said—and I do not know the number of accounts—that there will be hundreds of thousands of accounts where there is only \$200 or \$300 or \$400 being eroded by fees and commissions and goodness only knows what else, which probably nobody is going to claim. I would not be certain about that because I am jolly sure that if it were my money and I remembered that I had been in Australia 30 years ago and had paid some super, if I were retired and had the time to go and find it I would. So I am very happy for there not to be a threshold, but we have made that point—

Senator BUSHBY—That that might be an appropriate place to do it?

Mr Fauvet—Yes.

Senator BUSHBY—That is an interesting point you make—that there may well be a significant number of people whose minds draw to superannuation when they approach retirement age. A 21-year-old student who worked while they were here for three or four years might not think about it but they might 40 years later when they come to that point.

Mr Fauvet—Absolutely.

Senator BUSHBY—Obviously PriceWaterhouseCoopers give advice to their clients as to the fact that they have the super here and the consequences, but are you aware to what degree the government advises temporary residents that they have superannuation entitlements and can take them when they leave, albeit under certain circumstances?

Mr Fauvet—It is on the ATO's website, a reasonably good website. Information is there. Obviously it does not constitute advice or help; it is just a statement of facts—this is what will happen and this is what you can do. But basically you pay 35 per cent tax on what you are withdrawing.

Senator BUSHBY—Essentially an argument can be put that, as you said, it is fine for money that is ultimately not going to be claimed to be put into consolidated revenue, but an argument can also be made that the government should, as part of its laws requiring this money to be paid in the first place, try a little bit harder to connect the money that is there with the people who own it before they actually take it. Do you think there are ways that could be done?

Mr Fauvet—I do but I think there is a very fine line for the ATO or Treasury to draw between giving financial advice, which they shy away from—

Senator BUSHBY—Sure. I am not talking about financial advice so much as maybe when people's permits expire—and I am talking off the top of my head—they get a letter saying: 'Be aware that you may have superannuation. You should look into that before you go. Here is what you can do with it.'

Mr Fauvet—That would be helpful. All that you would come across on a daily basis would be when you leave the country and on the back of the exit card there is: 'Are you a temporary resident departing permanently? In that case you can get your super back.' So there is some information on departure.

Senator BUSHBY—As you are getting on the plane on the way out?

Mr Fauvet—Yes.

Senator XENOPHON—I think the intent of this bill is to deal with the issue of unclaimed lost superannuation. Are you saying that the issue that needs to be remedied can be—that if people were informed and they elected to keep in contact with their super funds it would remedy the problem that is being described?

Mr Fauvet—No, because that stops it from being lost super; it does not stop it from being fully within this 35 per cent tax regime.

Senator XENOPHON—So you are saying that the bill is intended to do one thing but its consequences go way beyond its purported initial intent?

Mr Fauvet—In a word, yes. But that is not uncommon. It is very frequently the case that there is an excellent legislative intent for something but the way the legislation is drafted throws the net much, much wider, and this is a classic case of that.

Senator XENOPHON—Does that hackneyed phrase 'unintended consequences' apply?

Mr Fauvet—I would love to think they were unintended.

Senator XENOPHON—We will just call them consequences then.

CHAIR—Thank you, Mr Fauvet, for coming in this morning.

[10.29 am]

HODGE, Mr Robert, Principal Policy Officer, the Association of Super Funds of Australia

HOWES, Ms Melinda Suzanne, Director, Policy and Industry Practice, the Association of Super Funds of Australia

CHAIR—Good morning. Thank you for coming in. Do you have an opening statement you wish to make?

Ms Howes—Thank you very much for letting us appear this morning. As you are aware, ASFA is a not-for-profit group that represents superannuation funds, trustees and members. Our members represent over 80 per cent of superannuation moneys in Australia. We have been involved throughout this consultation process. I think most of the issues that we initially raised regarding this legislation have now been solved. There are three remaining issues that we think are still very important that we would just like to touch on this morning and that were highlighted in our submission.

The first is a timing issue. New unclaimed moneys reports are not due until 31 October this year. The reporting process for this temporary residents legislation is designed to mesh in with the unclaimed moneys reporting process. All of the systems development for that is on schedule for 31 October 2009. However, the temporary residents first reporting date is 30 April 2009. The issue here is that superannuation funds feel that they cannot meet the 30 April deadline because that would involve bringing forward the systems development that is already in train by six months.

Part of the reason that this cannot be done is, as I said, that the system's timetables are usually booked out a year in advance. The other part is that superannuation trustees often cannot put aside the money to spend on systems development until they have firm legislation in place. Since this legislation is yet to be passed, they feel they cannot at this point even start the development work.

If the systems are not in place, the other alternative would be to report manually. The first report is going to be very large. It is going to be an enormous task to do manually. Even if legislation were passed today and we all started trying to get manual systems in place for 30 October 2009, it would be doubtful whether that deadline could be met. Part of the reason is that we are going to need to sort the data against a list provided by the—

Senator XENOPHON—Sorry, you said 30 October 2009?

Ms Howes—Sorry, 30 April. It is unlikely that the 30 April deadline could be met. The data has to be sorted against a list provided by the ATO. That is a large task because of the volume of accounts. We estimate up to three million accounts could be involved in that very first reporting phase.

In summary, super funds are unlikely to make the deadline. If it is for 30 April, it will be a large additional cost because it will have to be done once in April and then the systems will be in place in any case by 31 October. So just bringing the work forward six months places an enormous additional cost burden ultimately on the members of Australian super funds.

Senator XENOPHON—Have you got an idea of how much it would cost—a ballpark figure—if you had to do it manually by 30 April?

Ms Howes—There are two issues. Can it be done in the time frame? But the extra costs we estimate to be between \$10 million and \$100 million. That is based on feedback we have had from superannuation funds on their individual costs, which we have then extrapolated out. So it is large. We understand that there are important government revenue implications here. However, importantly what we are asking for is not to reduce the revenue but to delay the revenue by six months to mesh in with the systems development that is already in train.

The second issue is an equity issue. We expect that many of these temporary residents' superannuation moneys are currently sitting in eligible rollover funds. Once the reporting is done and the money is then moved across, those eligible rollover funds may face liquidity issues from having a large transfer of maybe a significant proportion of their assets going out at the one time.

Funds can apply to APRA at the moment for a stay on rollovers where there are liquidity issues. However, that is a rollover from one super fund to another. So we would ask that consideration be given for a similar provision or similar permission to be put in place for eligible rollover funds where they are making payments

under this legislation, so that if there are liquidity problems they can make those payments in an orderly fashion so as to not disadvantage the other members of those eligible rollover funds.

The third main issue is one that I think has already been discussed at length—temporary residents who are here and, not wanting to disturb their retirement funding, who have been making salary sacrifice contributions, often under the existing legislation and often with financial advice as to the tax laws here. Those people making withdrawals under the DASP provisions will in effect face a 50 per cent tax rate because they paid 15 per cent on the contributions when they went in and they will pay 35 per cent when they come out. That is higher, as we know, than all of the highest marginal tax rates. So it is a significant penalty, it is retrospective and we would ask that those people be able to seek relief on a one-off basis if they are in that situation. There are some other technical issues also in our submission around reporting dates and other issues that are quite important, but those are the three key ones that we would like to emphasise this morning.

CHAIR—Thank you.

Senator BUSHBY—Just to clarify one of the points that you made regarding investment in the processes that the super funds will need to undertake to implement the law if it is passed, are you saying that they do not think it is prudent to spend the money putting in place the systems, or could it actually be a breach of their fiduciary obligations to spend it before the legislation is in place?

Ms Howes—The latter—a breach of their obligations.

Senator BUSHBY—So it is not just a matter of management or administration; it is a matter of their having responsibilities to the owners of the funds that they manage and possibly being in breach of those responsibilities.

Ms Howes—That is correct.

Mr Hodge—Yes, in a not-for-profit fund, when the trustees incur expenses they are incurring them out of trust funds and they can only incur expenditure which is reasonably necessary to administer the trust. So until there is such legislation, if they were to commit money, then they would effectively be making themselves personally liable if the legislation should fail to go ahead.

CHAIR—You said you put this in a submission in the initial consultation on the bill. Did you get any response back in this area? I guess it is a bit difficult, because they probably did not know when the bill was due to be sent to parliament.

Mr Hodge—The association has been having discussions with the Australian Taxation Office over a period of time from when the legislation was first announced. The ATO have been very cooperative in working with the industry to try and work out what is the best way to administer this legislation. But consistently the industry has said that, because of the peculiarities of administering trust moneys, we have always sought a 12-month gap between the date of royal assent and the date of the implementation of legislation. In our earlier submissions and even submissions on the draft bills that we saw, we consistently made the point that we felt that April of next year was unachievable without significant additional expense.

The industry acknowledges that it is going to have to meet expenses in implementing this, whether it is implemented in April next year or October next year. Our big issue is that if we go six months earlier then there would be significant additional cost, and that is that the figure we are talking about. One fund have told us that they think it will cost \$4 million for their fund to implement in April. It is a really significant additional burden to go early.

Senator XENOPHON—Whereas if it were six months later and you had your systems in place, what would the cost be then? Has that fund given you an estimate?

Mr Hodge—We have not estimated what the cost would be, but what you need to realise is that unclaimed moneys have been required to be paid to the tax office since this year. At the moment, the systems that are being used to do that are emulating the systems they use to report that money and pay that money to the state treasuries. The tax office has set a program in place where there will be new data transfer arrangements which will come into force for the first reporting period after 1 July next year. So that is what funds have committed expenditure to do.

In discussions with the ATO on the administration of this process, we looked at the data requirements for unclaimed moneys and data requirements for temporary residents, and they were almost identical, so it was decided to build off that system—to use the existing work which has already been done. There is an additional cost insofar as, in paying unclaimed moneys, the funds look at their members and their members' behaviour to

work out whether this money should have been claimed and is payable to the tax office. What is slightly different with temporary residents is that the tax office will identify them through work they do with DIMIA and they will send a list to the funds, and then the funds will have to match that list against their members. So it is a slightly different processing. There is a cost—

Senator BUSHBY—And then, regardless of the information that you might hold about those people on that list, you have to send the money to the ATO, under this bill?

Mr Hodge—Correct, yes. So what will happen is that the ATO will say, ‘We have identified these people as being temporary residents.’ The fund will match that list against their members to see if the person is still a member of the fund and also to see if they have any information which would indicate otherwise. So they verify that it is their member and they verify that they do not have any disagreeing information, and then they would pass the data. So that is the additional piece of work that will have to be done under this new arrangement. There is a cost involved. We have not asked our members for figures on that cost because it is a cost which is going to have to be incurred anyway.

Senator XENOPHON—So it will be a fraction of having to do it manually?

Mr Hodge—Yes.

Senator XENOPHON—As in what—a tenth or less than a tenth?

Mr Hodge—We do not know. For the purpose of this discussion, we do not think that particular cost is relevant because that cost will have to be met.

Senator XENOPHON—So it is inconsequential in the scheme of things if it still—

Mr Hodge—It is not an inconsequential cost. There is always a cost of having to do additional work and extracting the information. As to what the cost is, we are not sure, but our members have told us that, in going early, there is a significant additional cost—

Ms Howes—We did not ask them for the cost of the original; we asked for the extra cost.

Senator XENOPHON—But it is relatively minor compared to doing it manually?

Mr Hodge—Yes. If you automate the process, definitely. If you are doing it manually, that brings in the really key issue—one of the other issues which we raised—which is the date on which you have to calculate what the value of the benefit is, because the legislation requires that date to be the date of payment to the tax office, which will be 30 April next year or 31 October. But, if you are doing a manual process, and even doing it electronically, that work will be carried over several weeks. It could even be several months. If you are in a unitised fund, you are doing work now to try and work out a strike price at a date in the future, which is unknown.

Senator BUSHBY—I have a couple more questions. In one of the submissions that we received, it was suggested that the increase in DASP withholding tax from 30 to 35 per cent was not part of the Treasury consultation process. Is that your experience? Were you aware that in the lead-up to this, during the consultation period, there was a prospect of increasing the rate?

Mr Hodge—From my recollections, we only became aware of the increase in the DASP rate at the point in time when the legislation was tabled.

Senator BUSHBY—It was not part of the earlier consultation on a lot of the other issues?

Mr Hodge—That is correct, because all the other stuff was on the implementation process and the mechanisms and which—

Senator BUSHBY—But that does have a significant impact in terms of the retrospectivity aspect and how it impacts on members’ funds—people who are trying to take it out of the country?

Mr Hodge—It does have. There has always been this issue that the majority of people who are temporary residents are on the lower income levels—those backpackers and those temporary people coming in—and it has always been that the price they pay for getting their money early is a price in tax which would be significantly higher than if they had taken the money as salary and wages.

Senator BUSHBY—That then comes to the point that you were making about those who contribute additional money incurring additional tax when they leave as a result of this.

Mr Hodge—We are aware of people who work in the area of advising people coming to Australia on temporary resident visas of the advantages of saving money and salary sacrificing to the Australian

superannuation system under both the old rules and the new rules. There were significant tax advantages of doing that. We are concerned that these people have probably been advised that way and not necessarily on advice of the legislative risk of things changing going forward. So there is that issue that these people have sat there and said, 'Well, I can structure my affairs this way for an advantage.'

Senator BUSHBY—So these are people who were here for a while and contributed significant additional funds themselves—

Mr Hodge—Yes.

Senator BUSHBY—or even, potentially, high-income earners who did not necessarily contribute that much themselves but, because of the nature of their high income, they have substantial amounts under management in Australia?

Mr Hodge—Those people were always going to be caught if it was just a superannuation guarantee being paid, but we feel that those people who have put additional moneys in based on how the legislation was structured have been severely disadvantaged and that perhaps some consideration should be given to the circumstances under which they were contributing in good faith under existing laws.

Senator BUSHBY—So, for the record, how will it change for them? For those people who put in a lot of additional money while they were here and where it is actively managed in Australia, they know it is here and they are in contact with their super fund, how will things change under this legislation for them?

Mr Hodge—In the simplest situation of a person who is, say, in their 40s or 50s, who transferred here on a temporary residence visa, made significant salary sacrifices and was quite prepared because of the security of the Australian superannuation system and the long-term performance to leave their money here until they retired, after age 60 they could take it out tax free.

Senator BUSHBY—Even though they were overseas they could still take it out?

Mr Hodge—Even though they were overseas, because the legislation for taking money out does not look at where you are residing; it looks at your age and it looks at the nature of the contributions that you have paid into the fund.

Senator BUSHBY—But, if this bill passes, from that point on all of that money after six months—or presumably it will go straightaway, on the first report, if they have been out of the country for six months—will go to the ATO and become subject to this DASP?

Mr Hodge—That is correct.

Senator BUSHBY—So it is a huge change, isn't it?

Mr Hodge—But even should the person wish to take the money out now—the difference is that these people currently have the opportunity, having left the country, so their temporary residence visa has expired or has been cancelled, to withdraw the money and pay the 30 per cent DASP tax.

Senator BUSHBY—But if they wait till they are 60?

Mr Hodge—If they waited until 60, they would not be taking money out under the DASP condition of release; they would be taking it out under the normal retirement condition of release, and the rules which apply would be that that money would be tax free. These people now, under this legislation, have no choice.

Senator BUSHBY—They lose it all.

Mr Hodge—Even should they return to Australia, because of the fact that the money was paid to the ATO as temporary residence money, the only way that money can be paid is by the DASP tax being withheld.

Senator BUSHBY—Does the same argument apply for somebody like my example earlier of a high-income earner who was here for some time and accumulated some money? If they turn 60 currently, they can still take all of that out without having to incur DASP as well?

Mr Hodge—That is right, under the current arrangements.

Ms Howes—They are in the same situation, yes. I guess the reason we have drawn particular attention to this type of person is that they have made a conscious decision—

Senator BUSHBY—Yes, exactly.

Ms Howes—to put additional money in rather than taking it as a cash sum.

Senator BUSHBY—So it is even more inequitable, in a sense.

Ms Howes—Correct, yes, but it is also somewhat inequitable for the existing people.

Senator BUSHBY—Well, it is a big change. I think that, in making decisions like that, you need to be aware of the consequences.

Ms Howes—Yes.

Mr Hodge—That is right. And people putting additional contributions in now would be on notice, but these people were not.

Senator BUSHBY—Yes. Thank you.

Senator XENOPHON—Just going back to the question I asked of Mr Fauvet: the intent of this legislation on the face of it seems to be to be able to deal with lost or unclaimed super, but you are saying that the consequences go way beyond what the purported intent of the legislation is.

Ms Howes—Yes. The reason is that this money is then put in a bucket where the only way out is DASP. I think that the implications of that tracing of the money for those people were perhaps not fully realised.

Senator XENOPHON—But surely your association made representations to government and to Treasury on this?

Mr Hodge—We had pointed out the issue in submissions.

Ms Howes—Yes. So these are the remaining issues. Sorry, the third issue we highlighted, the increase to the tax rate, was not previously realised—it was at 30 per cent; it is now at 35 per cent—but has always been an issue.

Mr Hodge—We had previously raised the issue about people who had salary-sacrificed under existing laws. As you say, it is only intended consequences. We think that these people are going to be a very small minority, but this very small minority has been significantly impacted. The original proposal was that this money go to the Australian Taxation Office. If it was not claimed within a set period of time, it was forfeited. In our earlier submissions we said that we thought there were constitutional issues in effectively confiscating property without giving any compensation. As Melinda said, we note that some of the significant issues we raised have been addressed, and the issue here is that the money is always available.

Senator BUSHBY—A suggestion was made by the previous witness about an opt-out system. Would you support an opt-out system for people who are actively managing their funds?

Mr Hodge—When you have an opt-out system, it adds complexity to the system. That is why going forward people are on notice as to what the rules are. What we would be much more comfortable with is simplicity so it is a consistent rule across the board but, for these particular people who have in good faith made these additional contributions with an expected outcome down the track, with some mechanism for redress being given to them so they can have an avenue to ameliorate the impact on them.

Ms Howes—The alternative is for them, if they are actively managing their system, to opt out of being put into the tax office pool.

Senator BUSHBY—That is sort of what I was asking.

Ms Howes—Not opt out of SG—I just want to be clear about what you are asking.

Senator BUSHBY—No. I was talking about people who have money in funds, rather than at the six-month point having that transferred across to the ATO, being able to say: ‘I’d rather keep it there because I know it is there and I’m in contact with the fund. It’s not lost. I’m very happy with it being there and being managed the way it is.’

Mr Hodge—If that mechanism was operated through the superannuation fund itself—

Ms Howes—That could be the supporting information that shows that they are not lost.

Senator BUSHBY—That is right. Whether they are people who put additional money in or others, there would be a proportion of the temporary residents who have money in funds that would know it is there and be quite happy with that. It would probably not be the largest proportion, but there would be a proportion.

CHAIR—Thank you for coming in.

Proceedings suspended from 10.52 am to 11.08 am

LAING, Ms Kate Leonie, President, Students Representative Council, University of Sydney

LONG, Ms Charlotte, Casework and Policy Manager, Students Representative Council, University of Sydney

CHAIR—Welcome. Would you like to make an opening statement.

Ms Laing—The Students Representative Council represents all undergraduate students at the University of Sydney, both domestic and international. The SRC is also part of a national student representatives network both through democratically elected student representatives and through a national network of staff who work with students on a daily basis on all academic and welfare related issues.

The SRC wishes to state that all superannuation accumulated by international students is their money. We believe that more international students would take their superannuation with them when they depart if they knew that they could and if doing so were simplified. International student numbers are large. According to the Department of Education, Employment and Workplace Relations Australia has the highest proportion of international students in our education system than any other country, currently at 19.3 per cent according to the OECD. International student fees are a substantial revenue stream in the sector and, despite the current economic climate, numbers of international students are predicted to climb. This means that there will be more superannuation accumulated by international students. Further, the introduction of the 458 visas means that students can, if they choose, apply to stay in Australia for 18 months after study hopefully to work in an industry related job. The amount of superannuation will therefore increase further.

The SRC strongly believes that the system can be improved, but does not believe that the net effect of this bill will achieve the improvements required. We do not support the changes to the system which may increase the effective rate of tax in taking superannuation when temporary residents leave. Nor do we think this money should be forfeited to the Commonwealth. The change that needs to happen is for international students to take their money with them. This can be enabled by some changes, but the focus must be on the students having their own money when they leave.

The system is currently not well advertised and is too cumbersome. The SRC believes that there must be a wide education campaign so that international students as temporary residents know that they are entitled to take their superannuation with them when they leave and, further, that doing so is simplified. Hence, the recommendations in our submission. We have also suggested that the government better enable international students as temporary residents to take their superannuation by developing another classification within the super funds that could be marked for early exit. We believe that this would benefit all international students, not just those in the education sector.

CHAIR—Thank you. Do you have any understanding of what percentage of international students would earn money and would be affected by this system?

Ms Long—We think that about 228,000 temporary student visas were granted in 2006-07 and that 46 per cent of those students did apply for the right to work. But since April 2008 they do not need to apply for the right to work, they can automatically. So I suspect that that number would go up somewhat.

CHAIR—Currently it is just over 100,000.

Ms Long—Yes, that is what it seems to be.

CHAIR—What kind of education is there currently for people about being able to take their super when they leave?

Ms Long—When we talk to our international students, none. They are not provided with information by their employer about the fact that they can take their superannuation, because often they move between employers but even the students we have seen who have had an employer for a significant amount of time are not given that information. Nor are the education providers giving that information—they do a lot of returning-home preparation for students but, from what we can see, this is not a component of that today. It is something that we are working on with the University of Sydney, to make sure that the current batch of international students are given this information. One of the challenges for us has been presenting that information in a very clear and straightforward way and trying to simplify the process as much as possible, but there is a lot of information required.

CHAIR—Would you say it was more up to the superannuation fund or the government to advise people about their rights?

Ms Long—I would say the government, just because a student could move through a number of different superannuation funds and so the government launching an information campaign like this would simplify that.

CHAIR—The problem, of course, with an education campaign is you might run it for six or 12 months and catch whoever is here at the time but then the next year you would be back to a new influx of people. So it would be difficult to run any kind of intensive education campaign on an ongoing basis.

Ms Long—I suspect education providers would reuse the resources that were there in providing that information to students. I know that most of our returning-home seminar information is the same each year—it is not rehashed, obviously it gets revisited and improved each year, but the same information is there. So I think if we got it into the system at one point in time it would inevitably stay in the system.

CHAIR—And given that they are full-fee-paying students and the universities do benefit, why would you not expect the universities to develop the kind of literature themselves?

Ms Long—I think the university is not aware that international students are not taking their money with them. It is just not on their radar.

Senator BUSHBY—Thank you very much for coming along; it is good to see a student representative council taking an interest in an issue like this. Your submission is short but I think it is excellent. It makes some excellent points and practical suggestions as to where we can go. On the issue of education, which I think is central to what you are suggesting, who provides the returning-home education stuff?

Ms Long—In our university there is an international student support unit, which is a counselling, welfare and support service. They do orientation when students arrive onshore to try to make them feel comfortable. They provide information about being careful of the surf and a whole range of life experiences.

Senator BUSHBY—Is that provided through the SRC or through the university itself?

Ms Long—Through the university.

Senator BUSHBY—So presumably there would be similar organisations and programs in other universities around the country?

Ms Long—In the higher education sector, yes, but I am not sure about the VET and ELICOS sectors.

Senator BUSHBY—That is certainly a vehicle that could be used to educate students as they are already talking to them about the transition of going back to the country that they came from. As part of that, you could easily build into it—on an ongoing basis, which would overcome the campaign issue—some education saying, ‘If you have worked, this is what you need to do and this is how you can go about it to get the money before you leave.’

Ms Long—Yes. I think it crosses back to the other question: the universities would want to know that the information they were giving was correct, so they would not want to make out that information sheet themselves.

Senator BUSHBY—There is obviously an issue of financial advice and who should be providing that, and you would not want to cross that, but you could make basic statements of fact: if you have work, you have probably accumulated superannuation; if you have, you are entitled to take that before you leave. Some words could be worked out which I think would not contravene any financial advice. What about other aspects such as letters from DIAC to those who they are aware have visas coming to an end? As a matter of course, they could send out a letter talking about superannuation. Would something like that and other measures along those lines be useful?

Ms Long—Yes. I do not know quite how DIAC and the ATO—

Senator BUSHBY—DIAC would have records of who had visas and as a matter of course, regardless of whether people had superannuation or not, they could write a letter. As part of their process, they could write and say, ‘We note that your visa is expiring in six weeks time; these are some of the things you need to think about,’ and include superannuation in that.

Ms Long—I think that would be useful.

Senator BUSHBY—I am talking off the top of my head—I do not know what DIAC actually write at the moment, but something like that could help. I am probably answering a question rather than asking one here, but the question was asked whether the super fund or the government should take the responsibility of advising people who have super funds. Do you think that it is a reasonable proposition that the onus should be on the government because it is the government that imposes the obligation to pay the superannuation in the

first place and therefore it should be the government's responsibility to make sure that those who own it are connected with it before they leave?

Ms Long—Yes, I do. It is a government law, but I also think that, practically, it is much more sensible because the information will be more consistent and centralised, coming from one place.

Senator JOYCE—You say the university provides information at the moment. Who pays for provision of that information?

Ms Long—It varies from university to university. At the University of Sydney we provide no counselling at the SRC, but I understand that other higher education providers do. At the University of Sydney all of our counselling is provided by the university and therefore is funded by the university.

Senator JOYCE—Where does the SRC get its money from?

Ms Long—Since voluntary student union legislation was passed, we have been part funded by the university. They have covered our costs to maintain pretty much the same services.

Senator JOYCE—Do you get any feedback from overseas students who have gone back to their respective countries and who have then been in contact with you, saying, 'We feel that we have been slighted; there is money owed to us and we are never going to see it again'?

Ms Long—We have never had an international student raise a superannuation fund issue with us because the awareness is so low. People do not know about it until we talk to them. We have never had anybody complain.

Senator JOYCE—At this point in time you would say that, overall, it is really a case of people having this money put aside for them while they are not even aware of it. It is money sitting there for them.

Ms Long—Yes.

Senator JOYCE—Do you think that there would be a benefit to the Treasury, to Australia, if they never—and I am not suggesting that we should not—became aware of it? Look at your university where there are 100,000 overseas students that you presume are at work—and I think your figures are about 46 per cent of the 240,000 students or something like that. So in excess of 100,000 students are at work and paying the superannuation charge. That is a substantial amount of money just from your university that is just sitting in an account somewhere. If I wave the magic wand and you are now running the show, you are now the boss in Canberra, what are you going to do to fix this up?

Ms Long—I would contact all education providers from universities through to the ELICOS sector and to provide them with very clear resources that they can give their students and help resource their students to take their superannuation out. It would also simplify the system. At the moment even when students do know and do become aware that they can take their superannuation out, the amount of information that students are required to put on that form and the fact that they are required to fill out separate forms for each superannuation fund and the fact that if the Department of Immigration needs to confirm their immigration status means that they incur a charge. All these things are just far too cumbersome and they do not facilitate students having access to their own money.

Senator JOYCE—What would be the key aspects of the simplification of the legislation? Have you looked that far into it? Employees are what you have presented to us. Have you looked at the actual legislation itself and thought about your desired changes to the legislation to simplify it?

Ms Long—No.

Senator XENOPHON—We heard evidence earlier today that even if you keep in touch with your super fund, once you have gone, after six months you lose 35 per cent. So you are aware that that is one of the consequences of this legislation. Even though somebody may want to keep it in a super fund here until they come back and they take it out at age 60, do you have any feedback or any thoughts as to how overseas students react to the fact that even if they keep in contact with their super funds and do all the right things, once they have gone they effectively will be hit with a 35 per cent tax?

Ms Long—We do not have any feedback. This is not an issue that international students are talking about because their awareness of the issue is so low. As for the issue of not being able to claim back superannuation after a certain period of time, there are a number of international students who come here for maybe an ELICOS program or an undergraduate degree, return to their home country and work in the industry and then

come back here to do postgraduate degree. There could be six- or eight- or 10-year gap in between and they would still lose access to their super fund if there were a limit on time.

Senator JOYCE—Indeed they could come back for a long-term career here.

Ms Long—Absolutely. They could come back permanently.

CHAIR—Thank you, Ms Long and Ms Laing, for coming here this morning and for your submission.

[11.24 am]

MURRAY, Mr Nigel, Manager, Contributions Unit, Personal and Retirement Income Division, Treasury
NAIDU, Ms Shaz, Policy Analyst, Contributions Unit, Personal and Retirement Income Division, Treasury

CHAIR—Welcome. Do you have an opening statement that you wish to make?

Mr Murray—Thank you, Senator. I will just briefly give some background to the matter that might be of assistance to the committee.

CHAIR—I think that it would.

Mr Murray—I will start with the process of this measure. It was first publicly announced in the Mid-Year Economic and Fiscal Outlook by the former Liberal government in October or November last year. In the budget this year the current government announced a deferral of the measure to allow time for consultation. It had initially been planned to commence during the 2007-08 year. In May the government also issued a public consultation paper outlining the proposed arrangements and seeking industry feedback. Subsequent to that, as noted in earlier discussions today, 47 submissions were received and then the government made decisions on the basis of those submissions and announced some fairly significant changes to the measure in August. In particular, the previously announced measure, for example, required money to be transferred each year for anybody who was a temporary resident. The announced measure only requires money to be transferred once the person has left Australia. Subsequent to that there was also some targeted consultation on the draft bill itself. This was not public consultation but consultation with key industry technical people. Following on from that the bill was introduced in September.

As some background to the policy behind the measure, the committee is probably aware from the submissions that the superannuation guarantee is payable for temporary residents working in Australia. One interesting point is that there is an exemption from that if there is a social security agreement in place between Australia and a foreign country. These agreements allow people who have been sent to work in Australia to actually be exempt from paying contributions in Australia if they instead pay contributions back into their foreign country scheme. Australia has about 10 or 11 of these agreements in place that include these provisions at the moment and has an ongoing process of negotiations with other countries.

Before this bill is introduced—that is, at the moment—temporary residents can currently claim any money on departing Australia and that is subject to the existing withholding tax arrangements, generally at the 30 per cent rate. That provision was introduced in 2002 to allow temporary residents to claim that money and at that 30 per cent tax rate. The government's concern—and I guess there are two issues—was that many people do not actually claim that money when they leave the country and that adds to the significant number of lost accounts in the Australian superannuation system.

The bill provides that if these accounts are not claimed within six months—once the temporary resident has departed and that visa has expired and six months has passed—the fund will pay that money to the tax office. That works by the tax office sending a notice to the fund identifying the temporary resident and requiring the fund to make the payment for that temporary resident. The ATO works that out by data matching. It gets information on temporary residents from the Department of Immigration and Citizenship and matches that against its own information on members in super funds which it collects annually through contribution statements and through lost members' reporting. Despite the ability to actually claim this money, many temporary residents do not do so when departing Australia and I guess one of the government's aims was to bring all this money together in one area, at the tax office. If in future a temporary resident, after leaving the country, wishes to claim their money, they will be able to go directly to the tax office rather than having to work out which funds they were in and contact the funds directly. The tax office will have all the information for all the funds and can deal with that in a one-stop-shop process.

The second consideration which is probably relevant to some of the discussions here is that the government was of the view that the taxation concessions which are currently provided to superannuation in Australia, which are quite significant, are designed for those retiring in Australia so therefore it was appropriate that only those people retiring in Australia get access to those concessions. Hence, the government was of the view that it was appropriate that the withholding tax that applies for temporary residents departing Australia applies across the board and that people who are not going to retire in Australia are not able to save significant amounts in the Australian system, taking advantage of Australian funded tax concessions even though they

will not be retiring here. That is probably all I wish to say as an opening statement. I am happy to take questions.

CHAIR—The initial question then is about the tax rate going up from 30 per cent to 35 per cent. Why was that done?

Mr Murray—The government just considered that it would be appropriate to raise that level. As I mentioned, the 30 per cent rate has been in since 2002 for people currently leaving Australia. The government considered that by raising it to 35 per cent it would bring it—once you include the contributions tax, the effective tax rate becomes 45 per cent—equivalent to the top marginal tax rate.

CHAIR—What do you say to the claim then that most people who are in Australia doing temporary work pay nothing like the top tax rate, that their income would not justify anything like that?

Mr Murray—That was ultimately a decision that the government made in considering the policy. It is hard for me to comment on the decision. That rate has always been at least 30 per cent, and it has been increased to 35 per cent.

CHAIR—We have had the example of those people who did not claim their super when they left because they saw it as a reasonable investment, and perhaps salary sacrificed more money into it because it was seen as a reasonable investment. You are saying that they are not going to retire in Australia and therefore should not have the tax concessions, but I think that it is reasonable that at the time there was no indication that things would change or that the government was considering change. So there is an argument that it is a retrospective tax for them because they did not expect that tax rate on money that they voluntarily contributed.

Mr Murray—The government did consider the submission that were made on that point and, as I indicated, they were of the view that it is not appropriate for the tax-payer funded tax concessions to be used for purposes other than funding Australians in their retirement.

Senator XENOPHON—Can I just follow that through. The temporary resident departing today may well be the permanent resident or citizen in five or 10 years time. What happens to those people—for instance, a student who has studied, got some money, had a short term assignment and then is back five or 10 years later. That means they would have copped a 35 per cent tax rate.

Mr Murray—As the bill is currently drafted, yes.

Senator XENOPHON—Was any consideration given in terms of the equity of that or those sorts of contingencies, in a sense?

Mr Murray—As I understand it, the government's general view was also to try to keep the system as simple as possible and hence apply the same basic arrangements across the board. Generally speaking I believe that people who would leave the country after their temporary resident visa is cancelled would probably not come back and retire in Australia. The government has announced, though, that persons who come back to Australia on a retirement visa—a special class of visa for retiring in Australia—will be exempt from the measure in total if they have brought money.

Senator BUSHBY—What if the money has already been sent to the ATO?

Mr Murray—Once the money has been sent to the ATO, again, there is a facility there for those—

Senator BUSHBY—They can get it back?

Mr Murray—If they have a retirement visa they will be exempted.

Senator BUSHBY—They will be exempted even if the money has already gone to the ATO?

Mr Murray—Yes.

CHAIR—You also noted that where people come from countries where there is a social security agreement, the superannuation guarantee is not payable. If by accident it is paid anyway, what happens with those people?

Mr Murray—Firstly, I should just clarify that it is a certain group of people who will be exempted under the social security agreements. These are people who are sent by their employer to work in Australia. So it is like a sponsor type arrangement. The way the legislation is drafted, again, if money was paid into the super fund for the individual and they then depart Australia and six months has passed, the money will be paid to the taxation office.

CHAIR—Which countries do we have those social security agreements with?

Mr Murray—I do not have the full list but it includes the US, the Netherlands, Portugal, Chile, Belgium, Croatia. I could provide those details.

CHAIR—Yes, if you could.

Senator JOYCE—How much is currently in this unclaimed pot of superannuation money from people who have gone overseas?

Mr Murray—There is no specific data available at the moment that identifies temporary residents who have superannuation in Australia, so we cannot give any precise details. As an indication, for example, of the lost member issue more broadly, there are 6.4 million lost accounts with an aggregate value of \$12.8 billion. That does not just cover temporary residents. That will cover Australians who may have moved jobs and lost track of their money

Senator BOYCE—Within that \$12.8 billion is the unclaimed portion of people who are overseas residents.

Mr Murray—A significant amount of it. There could be some who might not be classified as lost yet, for example if they are still in contact with their fund even though they have moved overseas.

Senator JOYCE—A significant amount? Do you have any sort of anticipation whatsoever—are we talking about half of it or a quarter of it?

Mr Murray—The revenue estimates of the government were that, over four years, \$1.2 billion would be collected under this measure.

Senator JOYCE—How long before it is re-absorbed into general revenue? How long does it stay in this fund before people say, ‘These people are not turning up, let’s take the money back’?

Mr Murray—As a matter of course, the money goes into consolidated revenue.

Senator JOYCE—And the course is?

Mr Murray—The way in which the legislation is drafted, the money is collected by the Taxation Office and it enters government revenue.

Senator JOYCE—After five years, 10 years?

Mr Murray—It enters government revenue at the time it is collected.

Senator JOYCE—Immediately?

Mr Murray—Yes.

Senator JOYCE—I am being cynical here, but this is a bit of an earner, isn’t it?

Mr Murray—There is significant government revenue involved, yes.

Senator JOYCE—How aware do you make people when they are working in Australia that there actually is money there that is theirs and that they are entitled to claim it?

Mr Murray—Currently, the ATO conducts some activities on existing lost members. I cannot go through the details of those; I am not familiar with the exact specifics. But they do run campaigns from time to time to try to reduce the number of lost members. In terms of temporary residents, as has been mentioned earlier today, the ‘departing Australia’ card states that if you are leaving Australia you may be able to claim your superannuation. So anyone who is filling out that card should get that information.

Senator JOYCE—I imagine that if the government are pretty handy at tracking down people if they overstay their visa, they should at least be proportionately as enthusiastic in tracking them down if they owe them money?

Mr Murray—Certainly, as part of this measure, again, the Taxation Office intends to undertake some information campaigns, putting articles in relevant publications et cetera to try to bring the changes to people’s attention.

Senator JOYCE—You mentioned the 45 per cent highest tax rate, but is that 45 per cent or 45 per cent plus? Do temporary residents also have to pay a Medicare levy—that is, another 1½ per cent on top of that?

Mr Murray—Not on this measure, no.

Senator JOYCE—How much are we collecting by people saying, ‘Ah well, even though I have to pay 45 per cent I’ll just grab the money’?

Mr Murray—Under the current arrangements—I do not have those figures with me, but I can take that on notice.

Senator JOYCE—Can you take that on notice. I want to know exactly what proportion of people say, ‘Regardless, I’ll just grab the money.’ There is an obvious discrepancy between the marginal tax rate that they are paying, 45 per cent, and what their commensurate tax rate would be for any other purpose. Could I also get you to take on notice what the loss of income would be for a change from the 45 per cent tax rate back to what would be the average marginal tax rate. I imagine most of those people would pay around 30 per cent.

Mr Murray—Can I just clarify: when you say ‘loss of income’, are you talking about individual revenue or government revenue?

Senator JOYCE—Basically, what is the government picking up because it is charging 45 per cent as opposed to what it would otherwise have to charge them if they were just on the average marginal tax rate?

Senator BUSHBY—Can I just confirm that, regardless of the degree to which a temporary resident maintains an interest in their superannuation fund, which they may have earned whilst in Australia, after they leave and have been gone for six months, this is an automatic thing? It is not a situation of them having to meet some lost super criteria? It is a six-month time limit?

Mr Murray—That is correct—six months has passed since they have left the country and the visa has expired or cancelled. The money will be transferred.

Senator BUSHBY—So even if they have money that they are actively managing in a super fund and are very happy, regardless of that it goes out of that super fund to the Australian tax office—

Mr Murray—That is correct.

Senator BUSHBY—and becomes part of this scheme.

Mr Murray—Yes.

Senator BUSHBY—I am interested in exploring the 60-year-old issue of retrospectivity. You say the government has decided, as part of this bill, that it is appropriate to impose this measure on people if they are not going to retire in Australia? That is a policy decision. When was that first proposed?

Mr Murray—That was just the government’s decision in the context of finalising the bill—

Senator BUSHBY—It was not part of the original proposal last year?

Mr Murray—The former government’s original—

Senator BUSHBY—You mentioned in your opening statement that the previous government raised this as a measure. We will just explore that.

Mr Murray—At a general level, both measures were always going to take everybody’s superannuation and transfer it to the tax office—every temporary resident who had departed the country.

Senator BUSHBY—Let us just explore what happened last year then. It was originally raised at a fairly high level?

Mr Murray—At a fairly high level.

Senator BUSHBY—There was no legislation proposed at that point, and no detail?

Mr Murray—No. There was a half-page summary.

Senator BUSHBY—There was a half-page summary: ‘This is what we would like to do.’ And the reason why no legislation was introduced before the election?

Mr Murray—It was just timing issues.

Senator BUSHBY—Was their original intention to do consultation?

Mr Murray—I—

Senator BUSHBY—You do not know?

Mr Murray—As a normal matter of course you would consult on these types of measures in finalising the detail.

Senator BUSHBY—But in the detail that was put together as part of putting together the bill, this principle became apparent: that people who are retiring outside Australia should not have the benefits of our advantageous superannuation taxation.

Mr Murray—Yes, the government made that decision in the course of considering the submissions and finalising the bill.

Senator BUSHBY—Why has it imposed that? Is it appropriate, first of all, to impose a requirement that superannuation be paid by employers to these temporary residents—presumably because we want to provide for people's retirement income—and yet, at the same time, to say, 'But we're not going to let you have the taxation advantage and we are going to take the money off you.' It smells a bit like they are imposing—saying, 'Employers must pay the money so that we can take half of it back.'

Mr Murray—Yes. I guess the concern with, for example, exempting employers from paying super guarantee on temporary residents is the labour market distortion it could encourage by making foreign workers cheaper to employ than local Australian workers. That is the general reason why the super guarantee is applied across the board.

Senator BUSHBY—That is a fair point. You mentioned that one of the concerns that the government was trying to address was that people were not claiming their super and that it was basically lost. And yet they have gone to the extent of taking money from superannuation in cases where it clearly is not lost. Why have they gone to that extent—given that, to use your words, one of the primary motivations for the bill is to deal with lost superannuation?

Mr Murray—I guess it is partly the taxation concession issue I mentioned before but also, I guess, from a design perspective it is much simpler to have an administrative system whereby the money is all pooled together and then the individual is able to claim it back later.

Senator BUSHBY—How do you deal with the evidence that we heard earlier about people who have come here and have, in some circumstances, put in significant amounts of their own money on top of the superannuation guarantee money that was paid—sometimes on the basis of advice given by financial advisers saying that this is a good thing to do—and then have basically been told, 'When you turn 60 you will be able to access this in the same way as any Australian can,' and who then, under this legislation, are going to find that all their money, including the money that they have put in themselves, is going to go into the ATO and be subject to the DASP? Do you think that that is an equitable outcome? Is that a reasonable thing for these people to have to face?

Mr Murray—Again, all I can really explain is how I understand the government's view on that matter, and that is that, again, the Australian taxpayer is funding the taxation concessions which are going into superannuation which these individuals are taking advantage of. The government does not consider it appropriate that those taxation concessions are provided to those individuals as they will not be retiring in Australia.

Senator BUSHBY—But, from what you have just told me, the main reason why superannuation has to be paid by employers is to avoid situations of inequity between the cost of overseas workers and the cost of domestic workers. So, if that is the main motivation, effectively it is just giving the government free money, because they do that to stop that inequity between the cost of workers. Superannuation is paid and then you say, 'If you give those people exemptions then the taxpayers are paying for it.' But it just does not add up, somehow. What is the reason? Is the purpose to stop overseas residents having the benefit of exemptions that are taking money out of the revenue, or is it to put money into the revenue, or is it to stop the dichotomy between foreign workers and domestic workers? It just does not seem to mesh.

Mr Murray—In those cases individuals can still claim back their superannuation but are subject to the additional withholding tax, the general aim being to ensure that they get their superannuation back but without the taxation concessions. The nine per cent will be paid; that might end up in the Taxation Office. The individual can still claim that back but, rather than getting it with the added funding of a government taxation concession, they get the money without that extra government taxation concession.

Senator BUSHBY—On the issue of timing, we heard from the superannuation industry that effectively they have real challenges in being able to make the first report by April 2009, partly because they have already committed a lot of their resources to other changes that are taking effect from 30 June next year and also because a lot of them, particularly the not-for-profits, are constrained in when they can actually start spending money for changes from fiduciary obligations before the bill actually becomes legislation. What is the Treasury's view on timing? Do you accept their argument that they are not going to be able to deliver by April 2009?

Mr Murray—Again, the government's view is that they have sufficient time to prepare. The measure has been in the public domain for some time and the industry have been able to start making at least preliminary preparations as a result of that. The measure will not really cut in and commence until payments are required, which is not intended to be before April next year, which is a further six months from today. The Australian Taxation Office has already been in discussions with key industry groups and funds and is considering the issues there. The government has considered the issue and is of the view that there is sufficient time.

Senator BUSHBY—Okay. The government considers that there is sufficient time but the industry says there is not. The industry also says, firstly, that they do not think they can comply by April 2009 and, secondly, that if they try it is going to cost an enormous amount compared to what it would if they could do it at a more reasonable pace and that ultimately the cost of doing that will come out of the funds of superannuation holders. What will the government's response be if the industry funds default and do not meet the timelines?

Mr Murray—I am not sure I can really comment on what the government's response will be.

Senator BUSHBY—Is there anything in the legislation? Are there any sanctions built into the legislation if they do not report on time?

Mr Murray—There are administrative and other penalties that can be imposed.

Senator BUSHBY—Financial penalties?

Mr Murray—Yes.

Senator BUSHBY—So there are potentially more costs that are to be borne by the super funds and then ultimately by the members.

Mr Murray—There are potentially penalties there, yes.

Senator BUSHBY—Has there been any consideration of compensating the super funds, out of the significant revenue that would be raised by these measures, to assist them to fund the changes that they need to put in place?

Mr Murray—The government has not made any announcements.

Senator BUSHBY—No, but has there been any consideration that you are aware of? Has it been requested?

Mr Murray—I am not aware that industry has requested any funding from government.

Senator XENOPHON—I will just follow that through. You may have heard the association indicate that the ballpark figure for the administrative costs involved if the timeline is 30 April rather than the end of October would be between \$10 million and \$100 million. I think one super fund indicated that its administrative costs from having to do it manually would be in the order of \$4 million if it were before the systems were in place at the end of October.

Senator BUSHBY—Just one fund?

Senator XENOPHON—Just one fund; thank you, Senator Bushby. What do you say, Mr Murray? Have you had any feedback? Has Treasury been given any information about the concerns from the association and from the industry about the administrative costs involved with a 30 April implementation date?

Mr Murray—We are certainly aware of it, and industry associations, including ASFA, have raised these matters with the Treasury and with government. The government has considered them and at this stage is of the view that there is still sufficient time to implement those changes and that the current proposed timeline should continue.

Senator XENOPHON—But, if the timeline were delayed till the end of October, you would still get the revenue. What would the revenue implications of that be?

Mr Murray—There would be a delay, obviously, in the revenue in year 1, which is \$200 million-plus—\$250 million—in the year 2008-09. So that would not be collected in 2008-09, and it would be deferred till the following year.

Senator XENOPHON—But you would catch up with it, though. It would be largely caught up, wouldn't it?

Mr Murray—Yes, the same amounts would effectively be collected, but they would be collected later, and I guess that is a matter the government has to consider in its budgetary considerations.

Senator XENOPHON—It would not be lost; it would be delayed, rather.

Mr Murray—It would be delayed, yes.

Senator BUSHBY—I have a couple more questions, if that is okay. As part of the consultation process that occurred between Treasury and the stakeholders, was there any consultation on the potential for a five per cent increase in the tax rate?

Mr Murray—That was not included in the original public consultation paper which was issued in May. There was mention of that in some further targeted consultation which occurred with certain key industry groups and associations in the process of finalising the legislation and then it was publicly announced when the government introduced the legislation.

Senator BUSHBY—My final question relates to the education of those who own the funds. It seems to me that the most important aspect of any of this is actually reuniting those who own the superannuation moneys with those moneys. Although this bill might get lost in the fervour of the government with all the money that it looks like collecting into its consolidated revenue, ultimately the money does belong to the people who it was paid into the funds for. What consideration has been given to improving the lines of communication between those who own the money and the superannuation funds themselves? Did the Treasury, when it looked at this proposal, consider how you can better educate temporary residents that they do have superannuation funds to help them access them before they leave?

Mr Murray—Certainly the Australian Taxation Office is considering as part of its activities how best to get information about the measure out to temporary residents. They will be looking at, obviously, updating the information on their website. As I mentioned before, the existing card you fill out when leaving Australia—

Senator BUSHBY—That is when you are on your way out—

Mr Murray—Yes. They are also looking at putting information in relevant publications. So they will consider which publications are the best means, I guess, to get information out. They are in the process of putting together—

Senator BUSHBY—Nothing direct? Nothing at this stage where they may look to try and alert people with direct contact of some sort prior to their leaving?

Mr Murray—Not as far as I know, no. It is very difficult to identify these individuals.

Senator BUSHBY—I think it would be very difficult to identify 100 per cent, but there would be a substantial proportion that DIAC would have details on where they are. I know that the nature of particularly student visas is that they need to keep in contact. DIAC knows what they are doing. They keep an eye on them and make sure that they are passing exams and all those sorts of things. Similarly, other temporary residents have regular interaction with DIAC. I imagine they would have ongoing contact with a substantial proportion of temporary residents and be able to alert them to the fact as the term of their visa nears its end.

Mr Murray—As far as I am aware, there are no plans to try to directly contact individuals but—

Senator BUSHBY—Would it be useful if that did happen in terms of reconnecting—

Mr Murray—It is certainly something that could be considered. I think the ATO, as I understand it, is looking for various leverage points in trying to understand the best ways to communicate and some of those suggestions you have might be useful.

Senator BUSHBY—Thank you.

CHAIR—My final question is about the eligible rollover funds. ASFA put the point of view that the funds are designed to administer lost and inactive accounts and, if assets need to be sold quickly, particularly in today's climate, I guess, it might be a loss to other members of that fund. Can you give me Treasury's response to that?

Mr Murray—As the bill stands at the moment, the funds are required to make the payments when they are issued the notice from the Taxation Office, so there is no specific provision which provides any exemptions. It certainly was not an issue that was raised in the broad public consultation.

CHAIR—It might be more of an issue now, might it not?

Mr Murray—It has subsequently been raised by ASFA. It might have been in their submission as well, perhaps. To date, the government has been of the view that there has not been a need to specifically deal with that. Again, industry and these particular funds have had significant time to start preparing. As a general requirement, they are required to consider their risk return, diversification and liquidity. That is a statutory requirement. Obviously if there is a new measure or any event that is affecting their liquidity, they should be

starting to take appropriate measures to ensure they can meet the necessary requirements. Again, I guess the government feels that at the moment there has been significant time for the funds to adapt to that. Certainly while the issue of eligible rollover funds was mentioned in the ASFA submission, I am not aware that any one particular eligible rollover fund has come to us and raised it as likely to be a practical problem as opposed to a theoretical problem. At this stage, the law does not provide any exemptions in that area.

CHAIR—ASFA point out that currently funds can go to APRA if they can demonstrate there is a significant adverse effect on the financial position of funds or the interests of other members.

Mr Murray—Yes, they can go to APRA for what is called portability, which is when you are transferring benefits from one fund to another. There is not a similar provision in the current legislation drafted.

Senator BUSHBY—Would it be a benefit to have a look at that?

Mr Murray—It is something for the government to make a decision on that.

CHAIR—Okay. As there are no further questions, I thank Treasury for coming in today.

Committee adjourned at 11.55 am