

Tax Laws Amendment (2012 Measures No. 5) Bill 2012

Introduced into the House of Representatives on 19 September 2012; passed both Houses on 22 November 2012

Portfolio: Treasury

PJCHR comments: [Report 5/12](#), tabled on 15 October 2012

Ministerial response dated: 5 February 2013

Summary of committee view

3.1 The committee thanks the Assistant Treasurer for his response. In light of this further information, the committee considers that its concerns with regard to the compatibility of the amendments in Schedule 2 of the bill with human rights have been adequately addressed. The committee notes that it would have been useful for this information to have been included in the statement of compatibility.

3.2 The committee notes that the bill has already been passed by Parliament and regrets that the committee's concerns were not addressed in a timelier manner.

Background

3.3 This bill introduces changes to various taxation laws, including:

- amending the *Income Tax Assessment Act 1997* to phase out the mature age worker tax offset from 1 July 2012 for taxpayers born on or after 1 July 1957 (Schedule 2); and
- providing powers for Australian Tax Office and Customs officers to enter premises occupied by persons who are required to keep records under the gaseous fuels record keeping provisions in the *Excise Act 1901* for the purpose of monitoring compliance with the Act (Schedule 3).

3.4 The committee sought further information on the following matters to assist its consideration of the human rights compatibility of the bill:

- whether any differential treatment resulting from the measures in Schedule 2 of the bill was consistent with the right to equality and non-discrimination in article 26 of International Covenant on Civil and Political Rights (ICCPR); and
- whether the monitoring powers in Schedule 3 of the bill were compatible with the right to privacy in article 17 of ICCPR.

3.5 The Assistant Treasurer's response is attached.

Committee's response

3.6 The committee notes that, in light of the justification provided by the Assistant Treasurer, any differential treatment arising from the phasing-out of the

mature age worker tax offset is likely to be compatible with the right to equality and non-discrimination in article 26 of the ICCPR.

3.7 The committee notes that the bill has already been passed by the Parliament.

3.8 The committee notes that Schedule 3 of the bill (relating to the provision of monitoring powers for ATO and Customs officers) was removed prior to passage of the bill and welcomes the Assistant's Treasurer's assurance that the committee's concerns with regard to the compatibility of these powers with the right to privacy in article 17 of the ICCPR will be taken into account when and if these amendments are reintroduced at a later date.



The Hon David Bradbury MP
Assistant Treasurer
Minister Assisting for Deregulation

Mr Harry Jenkins MP
Chair
Parliamentary Joint Committee on Human Rights
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31 JAN 2013

Dear Mr *Harry* Jenkins

Thank you for your letter of 10 October 2012 to the Treasurer concerning the Tax Laws Amendment (2012 Measures No. 5) Bill 2012 (the Bill). The Treasurer has asked me to respond to your request, as Chair of the Parliamentary Joint Committee on Human Rights (the Committee), for further information about this Bill.

The Committee has sought clarification on some potential human rights issues in Schedules 2 and 3 to the Bill, before it can form a view on whether the Bill is compatible with human rights.

First though, I note that Schedules 3 and 4 to the Bill were removed at the Committee stage of the debate, and the amended Bill has since passed both Houses of Parliament (and is now awaiting Royal Assent). Upon reintroduction of the legislation originally contained in Schedule 3, the Committee's comments about how the measure may infringe upon article 17 of the International Covenant on Civil and Political Rights (the ICCPR), the right to privacy, will be taken into account and addressed in any future statement of compatibility.

Right to non-discrimination

According to article 26 of the ICCPR:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Schedule 2 to the Bill will phase out the mature age worker tax offset (MAWTO), which is currently a tax concession only available to individuals who are 55 years or older who work and have a net income from work of up to \$63,000. The MAWTO will be phased out by restricting eligibility to those who were already 55 years old on 1 July 2012, meaning that continued eligibility will be restricted by one year of age each year from 2012-13.

The MAWTO was always intended to encourage older workers to continue in the workforce by allowing them to keep more of the income they earned from working. The targeting of benefits like this, to achieve a policy outcome, is a commonly used approach by governments. However, the Government determined that the MAWTO had not proven to be a cost effective mechanism to encourage workplace participation. As such, the MAWTO will be phased out, and investments will instead be made in better targeted participation programs. These amendments can arguably be regarded as phasing out a concession in the tax law that provides differential treatment based on a person's age.

The phase out will still be available to individuals who were aged 55 or over on 30 June 2012, provided they also meet the work income criteria. Although individuals who turn 55 on or after 1 July 2012 will not be eligible for MAWTO, they would have only been eligible for MAWTO in the upcoming 2012-13 income year, and if this phase out was not implemented. As such, the phase out will not adversely impact current recipients of the MAWTO, and is considered a reasonable, necessary and proportionate way of paring back its continued application. Consequently, the Schedule 2 amendments do not promote differential treatment or discrimination based on age, and remain consistent with the requirements of article 26 of the ICCPR.

I thank you for bringing these matters to my attention, and trust this information will be of assistance to the Committee. I have also sent a copy of this letter to the Treasurer for his information.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'David Bradbury', followed by a long, horizontal, looping flourish.

DAVID BRADBURY

cc Deputy Prime Minister and Treasurer