

Superannuation Legislation Amendment (New Zealand Arrangement) Bill 2012

Introduced into the House of Representatives on 11 October 2012; passed both Houses on 22 November 2012

Portfolio: Financial Services and Superannuation

PJCHR comments: [Report 6/12](#), tabled on 16 October 2012

Response received: 12 March 2013

Summary of committee view

3.1 The committee thanks the Minister for his response.

3.2 The committee considers that the response has adequately addressed the committee's concerns and notes that it would have been helpful for this information to have been included in the statement of compatibility.

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

Background

3.4 This bill amends the *Income Tax Assessment Act 1997*, the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* and the *Taxation Administration Act 1953* to implement the Arrangement on Trans-Tasman Retirement Savings Portability to enable Australians and New Zealanders to transfer retirement savings between the two countries.

3.5 The Arrangement establishes a scheme to enable Australians and New Zealanders to transfer their retirement savings when they move between Australia and New Zealand, while preserving the integrity of the retirement savings systems of both countries.

3.6 The committee sought further information on the relevant safeguards for protecting personal information that may be disclosed through the information-sharing provisions in the bill before forming a view on the compatibility of the bill with the right to privacy in article 17 of the International Covenant on Civil and Political Rights (ICCPR).

3.7 The Minister's response is attached.

Committee's response

3.8 In light of the information provided, the committee accepts that the information sharing provisions in the bill pursue a legitimate objective (namely, to facilitate the transfer of retirement savings between Australia and New Zealand) and that the accompanying safeguards outlined in the response are likely to be sufficient to ensure that any limitation on the right to privacy may be regarded as reasonable, necessary and proportionate to achieve a legitimate objective.

3.9 The committee notes that it would have been helpful had this information been included in the statement of compatibility.

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



THE HON BILL SHORTEN MP
MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS
MINISTER FOR FINANCIAL SERVICES AND SUPERANNUATION

Mr Harry Jenkins
Chair
Parliamentary Joint Committee on Human Rights
Parliament House
CANBERRA ACT 2600

Harry
Dear Mr Jenkins

Thank you for your letter of 31 October 2012 to the Treasurer, on behalf of the Parliamentary Joint Committee on Human Rights (the Committee), concerning the Human Rights Compatibility Statement for the Superannuation Legislation Amendment (New Zealand Arrangement) Bill 2012 (the Bill). The Treasurer has asked me to respond to you, as I have portfolio responsibility for this matter. I apologise for the delay in responding.

In your letter you have sought information on the safeguards applying to personal information that may be disclosed through the information-sharing provisions in the Bill, to demonstrate that the measure is consistent with the right to privacy contained in article 17 of the International Covenant on Civil and Political Rights (the ICCPR).

Article 17 of the ICCPR states that 'no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation' and 'everyone has the right to the protection of the law against such interference or attacks'.

The Bill introduced a scheme to enable Australians and New Zealanders to transfer their retirement savings between the two countries when they move permanently or indefinitely across the Tasman Sea. The scheme is intended to enhance labour mobility between the two countries. It will also allow individuals to consolidate their retirement savings in their country of residence, and avoid paying unnecessary fees and charges on accounts in two countries.

The Bill inserted a provision into the *Taxation Administration Act 1953* requiring the trustee of the transferring Australian superannuation fund to provide a statement to the nominated receiving KiwiSaver scheme provider, and to the member, in respect of the member's benefits being transferred.

The statement may contain information relating to the member's benefits held in the Australian superannuation fund, such as contributions to the fund and the tax components of the benefits. The statement will also necessarily contain personal information (the member's name, address and date of birth) and details about the receiving KiwiSaver scheme (scheme name, registration number and the member's account number).

The information reported on the statement is the minimum information required to transfer the member's benefits. It is disclosed only to the receiving KiwiSaver scheme and to the member.

The disclosure of this information is necessary and is made for the primary purpose of facilitating the transfer of the member's benefits to the receiving KiwiSaver scheme. Without this information the transfer of the member's benefits could not occur.

In addition, the information reported on the statement may assist the member to receive concessional tax treatment should the member transfer the benefits back to an Australian superannuation fund.

The information reported on the statement is similar to the information required for a rollover or transfer of a member's benefits between Australian superannuation funds.

It is important to note that the member's Australian taxation file number is not reported on the statement and is not disclosed to the KiwiSaver scheme.

The transfer of retirement savings between Australia and New Zealand is voluntary for members. A member who may be concerned about the disclosure of information to a KiwiSaver scheme may choose not to transfer their benefits and preserve them in the Australian superannuation fund.

Superannuation fund trustees are subject to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, the *Superannuation Industry (Supervision) Act 1993*, the *Privacy Act 1988*, the National Privacy Principles under the Privacy Act and the governing rules of the fund in respect of the disclosure of personal information.

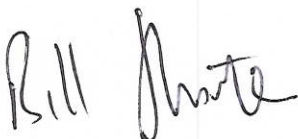
The disclosure of information to the receiving KiwiSaver scheme complies with National Privacy Principle 9:

- the member has consented to the disclosure of information necessary to transfer their benefits to a KiwiSaver scheme;
- the disclosure is necessary to complete the transfer of the member's benefits to the receiving KiwiSaver scheme; and
- the KiwiSaver scheme is subject to the *New Zealand Privacy Act 1993* and its Information Privacy Principles which govern the collection, use, disclosure, storage and access to personal information. The New Zealand Act and its Principles are substantially similar to the Australian National Privacy Principles.

I therefore consider that this information will be disclosed is for a legitimate objective and is reasonable, necessary and proportionate to achieving that objective.

Thank you for bringing the Committee's concern to my attention. I hope this information is of assistance.

Yours sincerely



BILL SHORTEN