

Tax and Superannuation Laws Amendment (2013 Measure No. 2) Bill 2013

Portfolio: Treasury

Introduced: House of Representatives, 20 March 2013

Status: Act, received Royal Assent 28 June 2013

PJCHR comments: Sixth Report of 2013, tabled 15 May 2013

Response dated: 28 June 2013 (date received)

Information sought by the committee

3.62 The committee sought clarification as to:

- whether the amendments to reduce the government's superannuation co-contribution rate were consistent with the rights to social security and an adequate standard of living; and
- why the proposed model to consolidate multiple superannuation accounts was not predicated on the consent of the member (beneficial owner) of the accounts; and whether trustees would be subject to the *Privacy Act 1988*.

3.63 The former Minister's response is attached.

Committee's response

3.64 The committee thanks the former Minister for his response.

Government co-contribution

3.65 The response explains that the changes to the government co-contribution are made in conjunction with the introduction of the low income superannuation contribution (LISC). According to the former Minister, the LISC will cover around eight times as many individuals as the government co-contribution and does not require low income earners to make personal superannuation contributions to their superannuation fund to receive the payment.

3.66 In light of this explanation, the committee is satisfied that these amendments do not raise any human rights concerns. The committee notes it would have been useful had this information been included in the statement of compatibility.

Consolidating superannuation accounts

3.67 The committee thanks the former Minister for clarifying that the *Privacy Act 1988* will apply to trustees when identifying members with multiple accounts.

3.68 According to the response, the primary reason for adopting a model where member consent is not mandatory is because of the:

...widespread inertia and disengagement individuals have with the superannuation system....

This inertia and disengagement means that even if trustees are required to obtain a member's consent prior to consolidation, members are unlikely to respond or take action, even if it is in their best interests. Therefore, a model requiring member consent is unlikely to achieve the same objectives as a model where member consent is not required.

3.69 The response notes that the proposed model does not preclude a trustee from contacting members or from adopting a process that involves giving members notice any plan to merge their accounts unless the member advises otherwise. It, however, does not explain why it would not be feasible to require trustees to take reasonable steps to notify members before their accounts are consolidated and to provide a reasonable opportunity for members to express their wishes before any action is taken.

3.70 The committee had previously noted that the measures to consolidate multiple superannuation accounts engage and limit the right to privacy in article 17 of the International Covenant on Civil and Political Rights because they interfere with a member's private affairs. As such they must be shown to be aimed at a legitimate objective and be reasonable, necessary and proportionate to that objective.

3.71 The committee considers that the purpose of consolidating multiple superannuation funds to protect the funds from being eroded by fees and charges is a legitimate objective. However, the absence of any obligation to notify the member and/or to allow the member to 'opt-out' of the scheme remains a concern. Given that it is open to a trustee to adopt a process that includes notification of the member, the committee considers that the proposed model does not reflect the less restrictive option for achieving the objective of the scheme. The committee is of the view that the former Minister's response does not provide adequate justification for the adoption of a model which excludes prior notification and consent altogether. It is therefore unable to conclude that these measures are compatible with the right to privacy.

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



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

Mr Harry Jenkins MP
Chair
Parliamentary Joint Committee on Human Rights
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Jenkins

Thank you for your letter of 15 May 2013 concerning Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013 (Bill) on behalf of the Parliamentary Joint Committee on Human Rights (Committee). I apologise for the delay in responding to your letter.

The Committee has sought clarification as to the compatibility of the amendments contained in Schedules 5 and 6 to the Bill with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Consolidation of multiple superannuation accounts

The Committee sought clarification as to the basis for adopting a model that does not require a member's consent to be first obtained before action is taken to merge their accounts and whether trustees will be subject to the *Privacy Act 1988*, in the context of the right to privacy in article 17 of the International Covenant on Civil and Political Rights (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.'

Schedule 5 to the Bill amends the *Superannuation Industry (Supervision) Act 1993* to expand the duties of trustees of particular superannuation funds to establish and implement procedures to consolidate accounts where a member of the fund has multiple accounts within a fund and consolidation is in the member's best interest.

In its report, the Committee noted that the consolidation of multiple superannuation funds serves a legitimate objective, and referred to the safeguards that have been put in place to ensure that the interference with privacy is reasonable, necessary and proportionate. The Committee questioned why the model adopted does not require trustees to obtain the consent of the member. The primary reason for adopting this model where member consent is not mandatory is due to the widespread inertia and disengagement individuals have with the superannuation system, as identified by the Review into the Governance, Efficiency, Structure and Operation of Australia's Superannuation System (*Super System Review*).

Many Australians have multiple superannuation accounts, and are paying multiple sets of administration fees and insurance premiums, within the same superannuation fund. This can happen, for instance, when a member has had a succession of different jobs within the same industry and has been enrolled in the same default fund on different occasions. Lost and unnecessary superannuation accounts can increase fees and reduce the savings of the individuals concerned. They can also add to fund administration costs.

The *Super System Review* identified that, in these situations, members' savings will be eroded by multiple sets of fees because of inertia and disengagement and/or the inability of funds to identify multiple accounts for consolidation. Industry experience shows that existing arrangements for account consolidation lack effectiveness where members are required to consent to consolidation because members may not respond to invitations to consolidate. This inertia and disengagement means that even if trustees are required to obtain a member's consent prior to consolidation, members are unlikely to respond or take action, even if it is in their best interests. Therefore, a model requiring member consent is unlikely to achieve the same objectives as a model where member consent is not required.

It is important to note, as specified in the statement of compatibility, that the model set out in Schedule 5 of the Bill does not preclude a trustee from contacting members to determine whether consolidation is in their best interest, nor does it preclude trustees from adopting a process that involves giving their members notice that they plan to merge two or more of their accounts unless the member advises otherwise.

The Treasury understands there is widespread support across industry for this model and that many fund trustees already regularly consolidate duplicate accounts belonging to the same member. The Bill provides a flexible regulatory framework and aims to ensure the process is industry-wide practice.

Members of superannuation funds will be made aware of the changes as trustees are subject to disclosure requirements, discussed in paragraphs 5.44 to 5.47 of the explanatory memorandum to the Bill.

The Committee also noted the Australian Information Commissioner's recommendation for trustees to have regard to the *Privacy Act 1988* when identifying members with multiple accounts. The Committee sought clarification as to whether trustees will be subject to the *Privacy Act 1988* as there did 'not appear to be any provision in the [B]ill that subjects trustees to such a requirement'. The *Privacy Act 1988* applies to an 'organisation', which is defined to include a trust. The *Privacy Act 1988* applies as a matter of law.

Government co-contribution for low-income earners

The Committee also sought clarification as to whether the changes to the government co-contribution could result in a reduction of superannuation assistance for some low-income earners and, if so, whether this is consistent with the rights to social security and an adequate standard of living under article 9 and article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The right to social security is contained in article 9 of ICESCR. In General Comment 19,¹ the UN Committee on Economic, Social and Cultural Rights elaborates further on this right and states that the right to social security requires State parties to 'ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them

¹ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 19, paragraph 59.

to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education’.

The right to an adequate standard of living in article 11 of ICESCR is ‘the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.’

The Committee noted that ‘the area of superannuation is likely to engage the right to social security in articles 9... and the right to an adequate standard of living in article 11’. Australia’s retirement income system consists of three elements commonly referred to as the ‘three pillars’: the age pension, mandatory superannuation contributions, and voluntary superannuation contributions. The first pillar, the age pension, provides for a minimum safety net of income in retirement, and is the primary method through which Australia meets its obligations under article 9 of ICESCR, as well as article 11 in so far as it relates to income in retirement.

The Committee’s concerns relate to the government co-contribution, which falls under the category of voluntary superannuation contributions.

The government co-contribution matches eligible personal superannuation contributions made to a superannuation fund, up to a certain threshold. Schedule 6 to the Bill amends the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* to reduce the rate of payment for the government co-contribution from 100 per cent to 50 per cent. It also decreases the maximum amount payable from \$1,000 to \$500; extends the freeze on the indexation of the lower income threshold for the 2012-13 income year; and sets the higher income threshold at \$15,000 above the lower income threshold (down from \$30,000).

The changes to the government co-contribution are made in conjunction with the introduction of a new, better targeted payment: the low income superannuation contribution (LISC), which has been legislated and applies in the 2012-13 income year. Although the overall benefits for the government co-contribution are reduced, many low income individuals will receive the LISC. It is estimated that the LISC will cover around eight times as many individuals as the government co-contribution (based on updated government co-contribution estimates used in the 2013-14 Portfolio Budget Statements).

The LISC is a broader payment that is estimated to benefit around 3.6 million individuals in 2012-13. Unlike the government co-contribution, the LISC does not require low income earners to make personal superannuation contributions to their superannuation fund to receive the payment. The capacity of low income earners to make personal superannuation contributions may be limited, which in turn restricts their ability to access the government co-contribution. Historically, the co-contribution has had a low take-up rate, which may be partially attributed to this requirement. Low income earners will automatically benefit from the LISC if they meet the eligibility criteria.

As noted in the statement of compatibility, this measure is compatible with human rights as it does not raise any human rights issues.

I trust this information will be of assistance to you.

Yours sincerely



BILL SHORTEN

