Superannuation Laws Amendment (MySuper Capital Gains Tax Relief and Other Measures) Bill 2013

Portfolio: Treasury
Introduced: House of Representatives, 29 May 2013
Status: Act, received Royal Assent 24 June 2013
PJCHR comments: Eighth Report of 2013, tabled 19 June 2013
Response dated: 26 June 2013

Information sought by the committee

3.90 The committee sought further information as to why it was necessary to reduce the superannuation benefits of high income earning Australian Defence Force members and how this was consistent with the right to social security.

3.91 The former Minister's response is attached.

Committee's response

3.92 The committee thanks the former Minister for his response.

3.93 In light of the information provided the committee makes no further comment on this bill.

3.94 The committee notes it would have been useful had the information provided in this response been included in the statement of compatibility.

RECEIVED
DATE 28/6/13 BY PJCHR

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

26 JUN 2013

Dear Mr Jenkins

Thank you for your letter of 19 June 2013 concerning the Superannuation Laws Amendment (MySuper Capital Gains Tax Relief and Other Measures) 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 sought further information as to why it is necessary to reduce the superannuation benefits of high income earning Australian Defence Force members (as set out in Schedule 2 to the Bill) and how this is consistent with the right to social security under article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The amendments contained in Schedule 2 to the Bill are consequential to Sustaining the Superannuation Contribution Concession and are necessary to ensure beneficiaries of this defence scheme have access to the same sources to pay their taxation liability as members of other Commonwealth defined benefit schemes.

Generally, contributions to complying superannuation funds are taxed at the concessional rate of 15 per cent. This means, people on the top marginal tax rate—45% (excluding the Medicare levy)—effectively receive a 30 per cent tax concession on their superannuation contributions, compared to the 17.5 per cent tax concession received by average income earners (that is, for those with a marginal tax rate of 32.5 per cent). The Government introduced amendments in the Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and Other Measures) Bill 2013 and Superannuation (Sustaining the Superannuation Contribution Concession) Imposition Bill 2013 to effectively reduce the superannuation tax concession received by individuals with combined income and concessional contributions above $300,000, from 30 per cent to 15 per cent. This ensures the tax concession received by higher income earners is more closely aligned with the concession received by average income earners.

High income individuals affected by the changes will be liable to pay an amount of 15 per cent of the total of concessionally-taxed contributions made on or after 1 July 2012, including defined benefit contributions, which exceed $300,000.

Generally, payment of assessed tax attributable to a defined benefit interest is deferred until after the first superannuation benefit is paid from that interest. The tax payable may exceed the amount of the first superannuation benefit, as the deferred tax liability will be a lump sum amount of tax attributable to a defined benefit interest, whereas the first superannuation benefit is paid as an income stream or pension.

The purpose of allowing the Commonwealth Superannuation Corporation to release a lump sum is to provide individuals with the flexibility to pay their liability from money released from their superannuation accounts. Individuals also have the option of paying their tax liability from other sources. Schedule 2 to the Bill amends the *Defence Force Retirement and Death Benefits Act 1973* to enable the Commonwealth Superannuation Corporation, the effective trustee of the Defence Force Retirement and Death Benefits (DFRDB) scheme (which is a defined benefit scheme), to release a lump sum for the purposes of paying a deferred liability and to adjust DFRDB benefits to reflect that payment.

If the consequential amendments are not effected, beneficiaries of the DRFDB will be required to pay any deferred tax liability from their own sources. As the deferred tax payable may exceed the amount of the first superannuation benefit, beneficiaries may encounter financial difficulties in paying their deferred tax debt. To minimise any financial difficulties that an individual may face, the amendments contained in Schedule 2 to the Bill will allow the Commonwealth Superannuation Corporation to release a lump sum to pay the deferred tax liability.

The Committee also queried whether the changes contained in Schedule 2 to the Bill are consistent with the right to social security contained in Article 9 of the 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 to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education'.

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.

The Committee's concerns relate to the taxation of concessional contributions, which falls under the category of mandatory and voluntary superannuation contributions.

The changes contained in Schedule 2 to the Bill are unlikely to have an adverse impact on an individual's access to a minimal essential level of benefits, as an individual must have combined income and concessional contributions in excess of $300,000 to be affected.

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

As noted in the statement of compatibility with human rights, 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

BILL SHORTEN