

Chapter 1

Introduction

1.1 On 17 August 2017, the Medicare Levy Amendment (National Disability Insurance Scheme Funding) Bill 2017 (the Medicare levy bill) and 10 related bills¹ were introduced by the government into the House of Representatives.² On 17 August 2017, the Senate referred the provisions of the Medicare levy bill and the 10 related bills to the Senate Economics Legislation Committee (the committee) for inquiry and report by 16 October 2017.³

1.2 The bills deliver on the government's commitments announced in the 2017–18 Budget to fully fund the National Disability Insurance Scheme (NDIS). In implementing these reforms the government aims to protect Australia's most vulnerable by providing:

Certainty for people with a disability. Certainty for their families and carers. And certainty to all Australians who may find themselves in a situation that requires these services. Certainty that the National Disability Insurance Scheme will be fully funded for the long term.⁴

Conduct of the inquiry

1.3 The committee advertised the inquiry on its website. It also wrote to relevant stakeholders and interested parties inviting written submissions by 8 September 2017. The committee received 25 submissions, which are listed at Appendix 1.

1.4 The committee held one public hearing in Sydney on 29 September 2017. The names of witnesses who appeared at the hearing are listed at Appendix 2.

1 The 10 related bills are: Fringe Benefits Tax Amendment (National Disability Insurance Scheme Funding) Bill 2017; Income Tax Rates Amendment (National Disability Insurance Scheme Funding) Bill 2017; Superannuation (Excess Non-Concessional Contributions Tax) Amendment (National Disability Insurance Scheme Funding) Bill 2017; Superannuation (Excess Untaxed Roll-Over Amounts Tax) Amendment (National Disability Insurance Scheme Funding) Bill 2017; Income Tax (TFN Withholding Tax (ESS)) Amendment (National Disability Insurance Scheme Funding) Bill 2017; Family Trust Distribution Tax (Primary Liability) Amendment (National Disability Insurance Scheme Funding) Bill 2017; Taxation (Trustee Beneficiary Non-Disclosure Tax) (No. 1) Amendment (National Disability Insurance Scheme Funding) Bill 2017; Taxation (Trustee Beneficiary Non-Disclosure Tax) (No. 2) Amendment (National Disability Insurance Scheme Funding) Bill 2017; Treasury Laws Amendment (Untainting Tax) (National Disability Insurance Scheme Funding) Bill 2017; and Nation Building Funds Repeal (National Disability Insurance Scheme Funding) Bill 2017.

2 *Votes and Proceedings*, No. 71, 17 August 2017, pp. 1001–1003.

3 *Journals of the Senate*, No. 55, 17 August 2017, p. 1757.

4 The Hon Scott Morrison MP, Treasurer, *House of Representatives Hansard*, 17 August 2017, p. 8825.

1.5 The committee thanks all individuals and organisations who assisted with the inquiry, especially those who took the time to make written submissions and appear at the hearing.

Background

1.6 The NDIS has been progressively introduced across Australia from July 2016. It provides support to people living with disability, their families and carers, and is jointly governed and funded by the Commonwealth, states and territories.

1.7 The funding for the NDIS agreed on by the Commonwealth, state and territory governments is based on intergovernmental agreements and funding comes from a complex combination of revenue sources. Existing money spent by Commonwealth, state and territory governments on disability services is redirected to the NDIS; and revenue raised from increasing the Medicare levy from 1.5 to 2 per cent of taxable income from July 2014 was directed to a special fund—the DisabilityCare Australia Fund (DCAF)—for the purposes of reimbursing state and territory governments for NDIS expenditure.⁵

1.8 The Commonwealth's contribution to funding the NDIS increases in conjunction with its progressive rollout, and it is estimated that at full scheme in 2019–20 it will cost approximately \$21 billion.⁶ However, while the DCAF and the repurposing of existing Commonwealth disability-related funding were sufficient to fund the NDIS over the transition phases:

...these sources of funding are not sufficient to cover the Commonwealth's NDIS contribution in full scheme, leading to a \$3.8 billion shortfall in 2019–20, accumulating to \$55.7 billion over the medium term.⁷

Purpose of the bills

1.9 The Australian Government is committed to fully funding the NDIS, and in order to fill the gap left by previous governments in the Commonwealth's contribution to funding the NDIS, the Medicare levy bill and the 10 related bills will:

- increase the Medicare levy by half a percentage point from 1 July 2019 resulting in an estimated gain to revenue over the forward estimates of \$8.2 billion;⁸ and
- credit in excess of \$7.2 billion of uncommitted funds from the Building Australia Fund (BAF) and the Education Investment Fund (EIF) to the NDIS Savings Fund Special Account once it is established.

1.10 The National Disability Insurance Scheme Savings Fund Special Account Bill 2016 (NDIS Special Account bill) which does not form part of this inquiry seeks

5 *Medicare Levy Amendment (DisabilityCare Australia) Act 2013.*

6 Budget 2017–18, *Budget Strategy and Outlook Budget Paper No. 1 2017–18*, p. 3-9.

7 Budget 2017–18, *Budget Strategy and Outlook Budget Paper No. 1 2017–18*, p. 3-9.

8 Following which, one-fifth of the revenue raised by the Medicare levy in aggregate will be credited to the NDIS Savings Fund Special Account once it is established.

to establish a special fund (the NDIS Savings Fund Special Account) as a means of providing a protective mechanism in the event of a NDIS funding shortfall.⁹ The NDIS Special Account bill was introduced in the House of Representatives on 31 August 2016 and the third reading agreed to on 2 March 2017. It was then introduced in the Senate on 20 March 2017 and is currently in second reading debate. The Senate Community Affairs Legislation Committee conducted an inquiry into the NDIS Special Account bill and recommended that the bill be passed.¹⁰

Overview of the bills

Medicare Levy Amendment (National Disability Insurance Scheme Funding) Bill 2017 (the Medicare levy bill)

1.11 The Medicare levy bill increases the Medicare levy rate by half a percentage point, from 2 to 2.5 per cent, from 1 July 2019 to fund the Commonwealth's contribution to the NDIS.

Consequential bills

1.12 Nine of the related bills are consequential to the Medicare levy bill, and make changes to ratings Acts to update the tax rates which incorporate the rate of the Medicare levy, from 1 July 2019.

1.13 The Fringe Benefits Tax Amendment (National Disability Insurance Scheme Funding) Bill 2017 amends the *Fringe Benefits Tax Rates Act 1986* to increase the fringe benefits tax rate from 47 per cent¹¹ to 47.5 per cent.¹²

1.14 The Income Tax Rates Amendment (National Disability Insurance Scheme Funding) Bill 2017 amends the *Income Tax Rates Act 1986* to increase the Medicare levy component of the rate of tax on No-Tax file number contributions income from 2 per cent¹³ to 2.5 per cent.¹⁴

1.15 The Superannuation (Excess Non-Concessional Contributions Tax) Amendment (National Disability Insurance Scheme Funding) Bill 2017 amends the *Superannuation (Excess Non-Concessional Contributions Tax) Act 2007* to increase

9 National Disability Insurance Scheme Savings Fund Special Account Bill 2016.

10 See Senate Community Affairs Legislation Committee, *National Disability Insurance Scheme Savings Fund Special Account Bill 2016 [Provisions]*, November 2016.

11 *Fringe Benefits Tax Rates Act 1986*, section 6.

12 Fringe Benefits Tax Amendment (National Disability Insurance Scheme Funding) Bill 2017, Schedule 1, item 1.

13 *Income Tax Rates Act 1986*, subsection 29(2).

14 Income Tax Rates Amendment (National Disability Insurance Scheme Funding) Bill 2017, Schedule 1, item 1.

the superannuation excess non-concessional contributions tax rate from 47 per cent¹⁵ to 47.5 per cent.¹⁶

1.16 The Superannuation (Excess Untaxed Roll-Over Amounts Tax) Amendment (National Disability Insurance Scheme Funding) Bill 2017 amends the *Superannuation (Excess Untaxed Roll-over Amounts Tax) Act 2007* to increase the superannuation excess untaxed roll-over amounts tax rate from 47 per cent¹⁷ to 47.5 per cent.¹⁸

1.17 The Income Tax (TFN Withholding Tax (ESS)) Amendment (National Disability Insurance Scheme Funding) Bill 2017 amends the *Income Tax (TFN Withholding Tax (ESS)) Act 2009* to increase the tax rate on employee share scheme interest from 47 per cent¹⁹ to 47.5 per cent.²⁰

1.18 The Family Trust Distribution Tax (Primary Liability) Amendment (National Disability Insurance Scheme Funding) Bill 2017 amends the *Family Trust Distribution Tax (Primary Liability) Act 1998* to increase the family trust distribution tax rate from 47 per cent²¹ to 47.5 per cent.²²

1.19 The Taxation (Trustee Beneficiary Non-Disclosure Tax) (No. 1) Amendment (National Disability Insurance Scheme Funding) Bill 2017 amends the *Taxation (Trustee Beneficiary Non-disclosure Tax) Act (No. 1) 2007* to increase the trustee beneficiary non-disclosure tax (No. 1) rate from 47 per cent²³ to 47.5 per cent.²⁴

1.20 The Taxation (Trustee Beneficiary Non-Disclosure Tax) (No. 2) Amendment (National Disability Insurance Scheme Funding) Bill 2017 amends the *Taxation (Trustee Beneficiary Non-disclosure Tax) Act (No. 2) 2007* to increase the trustee beneficiary non-disclosure tax (No. 2) rate from 47 per cent²⁵ to 47.5 per cent.²⁶

15 *Superannuation (Excess Non-Concessional Contributions Tax) Act 2007*, section 5.

16 Superannuation (Excess Non-Concessional Contributions Tax) Amendment (National Disability Insurance Scheme Funding) Bill 2017, Schedule 1, item 1.

17 *Superannuation (Excess Untaxed Roll-over Amounts Tax) Act 2007*, subsection 5(2).

18 Superannuation (Excess Untaxed Roll-Over Amounts Tax) Amendment (National Disability Insurance Scheme Funding) Bill 2017, Schedule 1, item 1.

19 *Income Tax (TFN Withholding Tax (ESS)) Act 2009*, subsection 4(b).

20 Income Tax (TFN Withholding Tax (ESS)) Amendment (National Disability Insurance Scheme Funding) Bill 2017, Schedule 1, item 1.

21 *Family Trust Distribution Tax (Primary Liability) Act 1998*, section 4.

22 Family Trust Distribution Tax (Primary Liability) Amendment (National Disability Insurance Scheme Funding) Bill 2017, Schedule 1, item 1.

23 *Family Trust Distribution Tax (Primary Liability) Act 1998*, section 4.

24 Family Trust Distribution Tax (Primary Liability) Amendment (National Disability Insurance Scheme Funding) Bill 2017, Schedule 1, item 1.

25 *Taxation (Trustee Beneficiary Non-disclosure Tax) Act (No. 2) 2007*, section 4.

1.21 The Treasury Laws Amendment (Untainting Tax) (National Disability Insurance Scheme Funding) Bill 2017 amends the *Income Tax Assessment Act 1997* to increase the Medicare levy and Medicare levy surcharge component of the rate of untainting tax from 3 per cent²⁷ to 3.5 per cent.²⁸

Nation Building Funds Repeal (National Disability Insurance Scheme Funding) Bill 2017 (the Funds repeal bill)

1.22 The Funds repeal bill implements the Government's 2014–15 decision to close the BAF and the EIF, by repealing the *Nation-building Funds Act 2008* in its entirety.²⁹

1.23 The Funds repeal bill makes minor amendments to five other Acts to remove redundant references to the BAF and the EIF, and make formatting changes.³⁰ It also provides transitional arrangements relating to residual matters relevant to the closure of the BAF and the EIF.³¹ These transitional arrangements preserve the reporting obligations of the Future Fund Board of Guardians (FFBG), existing agreements under the *Nation-building Funds Act 2008*, and the requirement for the annual report given by the FFBG.³²

1.24 The Funds repeal bill does not allow any residual miscellaneous receipts that may be received after the funds are repealed to be credited to the Future Fund Special Account. Instead, it provides for such receipts to be credited to the Consolidated Revenue Fund, which will allow them to be subsequently credited to the NDIS Savings Fund Special Account once it is established.³³

26 Taxation (Trustee Beneficiary Non-Disclosure Tax) (No. 2) Amendment (National Disability Insurance Scheme Funding) Bill 2017, Schedule 1, item 1.

27 *Income Tax Assessment Act 1997*, subsection 197-60(3).

28 Treasury Laws Amendment (Untainting Tax) (National Disability Insurance Scheme Funding) Bill 2017, Schedule 1, item 1.

29 Nation Building Funds Repeal (National Disability Insurance Scheme Funding) Bill 2017, Schedule 1, Part 1.

30 *COAG Reform Fund Act 2008; DisabilityCare Australia Fund Act 2013; Future Fund Act 2006; Health Insurance Act 1973; and Medical Research Future Fund Act 2015. See Nation Building Funds Repeal (National Disability Insurance Scheme Funding) Bill 2017, Schedule 1, Part 2.*

31 Nation Building Funds Repeal (National Disability Insurance Scheme Funding) Bill 2017, Schedule 1, Part 3.

32 Nation Building Funds Repeal (National Disability Insurance Scheme Funding) Bill 2017, Schedule 1, Part 3, items 34–37.

33 Nation Building Funds Repeal (National Disability Insurance Scheme Funding) Bill 2017, Schedule 1, Part 3, item 38.

1.25 The Funds repeal bill includes a rule-making power to enable the Minister to make rules in relation to transitional matters relating to the amendments or repeals made by the bill.³⁴ This will allow the Minister to deal with unintended or unforeseen consequences of the Funds repeal bill.³⁵

Legislative scrutiny

1.26 The explanatory memorandums to the Medicare levy bill and the 10 related bills state that the bills do not engage any of the applicable rights or freedoms under the *Human Rights (Parliamentary Scrutiny) Act 2011*, and, as such, are compatible with human rights.³⁶ The Parliamentary Joint Committee on Human Rights considered the bills in its *Report 9 of 2017* and made no comment.³⁷

1.27 The Medicare levy bill and the 10 related bills were also considered by the Senate Standing Committee for the Scrutiny of Bills in its *Scrutiny Digest 10 of 2017*, and no comment was made.³⁸

Financial Impact

1.28 The measures enacted by the Medicare levy bill and the 9 consequential bills are estimated to result in a gain to revenue over the forward estimates of \$8.2 billion.³⁹

1.29 The measures enacted by the Funds repeal bill will contribute in excess of \$7.2 billion to the NDIS Savings Fund Special Account once it is established.⁴⁰

34 Nation Building Funds Repeal (National Disability Insurance Scheme Funding) Bill 2017, Schedule 1, Part 3, item 39.

35 Explanatory Memorandum, p. 30. The committee notes that rules made under this provision are legislative instruments, and therefore would be subject to disallowance by virtue of section 42 of the *Legislation Act 2003*.

36 Explanatory Memorandum, pp. 18–24; and p. 31.

37 Parliamentary Joint Committee on Human Rights, *Report 9 of 2017*, 5 September 2017, p. 83.

38 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 10 of 2017*, 6 September 2017 p. 19.

39 Explanatory Memorandum, p. 4.

40 Explanatory Memorandum, p. 5.