

**CHAPTER 10 : RECOMMENDATIONS**

**BILLS TO BE AGREED**

*Recommendation 1*

The Committee recommends to the Senate that the *Superannuation Guarantee Charge Bill 1992*, the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Bill 1992* and the *Superannuation Guarantee (Consequential Amendments) Bill 1992* be agreed to without amendment.

*Recommendation 2*

The Committee recommends that the Senate agree to the *Superannuation Guarantee (Administration) Bill 1992* as amended in accordance with the points contained in recommendations 3 to 7.

*Recommendation 3*

The Committee recommends that the amendments to the *Superannuation Guarantee (Administration) Bill 1992* moved by the Government in the House of Representatives be agreed to without amendment. These are contained in Appendix E.

*Recommendation 4*

The Committee recommends that the Government prepare amendments to the *Superannuation Guarantee (Administration) Bill 1992*:

- (i) to ensure that local government councillors who receive salary or wages are covered by the Superannuation Guarantee, while other local government councillors, who typically receive a monthly payment for attending meetings, will not be covered by the Superannuation Guarantee;
- (ii) to provide that employer superannuation support for 1993-94 and subsequent years will be measured on a quarterly basis;
- (iii) to increase the \$500 000 annual national payroll threshold to \$1 million;
- (iv) to provide tables of charge percentages for employers with annual national payrolls of \$1 million or less as follows:

Year	%
1992-93	3
1993-94	3
1994-95	4

1995-96	5
1996-97	6
1997-98	6
1998-99	7
1999-2000	7
2000-01	8
2001-02	8
2002-03 and subsequent years	9

- (v) to provide tables of charge percentages for employers with annual national payrolls exceeding \$1 million as follows:

Year	%
1/7/92-31/12/92	4
1/1/93-30/6/93	5* Disallowable
1993-94	5
1994-95	5
1995-96	6
1996-97	6
1997-98	6
1998-99	7
1999-2000	7
2000-01	8
2001-02	8
2002-03 and subsequent years	9

- (vi) to provide that the increase to five per cent on 1 January 1993 for employers with payrolls over \$1 million will have force following the making of a regulation within 28 days of Royal Assent which regulation may be disallowed\* by either House;
- (vii) to provide that if no such regulation referred to in (vi) is made, or if the regulation is disallowed no later than two sitting days after 8 December 1992, the increase to five per cent on 1 January 1993 for employers with payrolls exceeding \$1 million will not have effect; and
- (viii) to provide that, if an employee receives less than \$450 by way of salary or wages in respect of a month, the employee's employer will not be required to provide superannuation support for that employee for that month.

#### TECHNICAL ASPECTS

The Government's December 1991 Information Paper indicated that where an employer company goes into liquidation, the Levy would rank equally with employee entitlements. The Committee notes that these requirements are not in the Bill.

The Committee also understands that there are technical difficulties with the Bill in relation to benefit certificates for defined benefit superannuation schemes and the calculation of the reduction in charge percentages where certain salary or wages are not to be taken into account for working out a shortfall component. In relation to the first issue, the difficulties arise from the issue of and the period covered by a certificate and the method of calculation of the national employer contribution rate. The Committee understands that Government officials have discussed these aspects of the Bill with industry representatives.

The second issue concerns the calculation of the actual amount of employer superannuation support in respect of an employee where for some part of the contribution period the employee receives salary or wages that do not need to be taken into account. There is a difficulty with the Bill in that the actual level of superannuation support calculated under the provisions of the Bill does not correctly take into account those periods of employment where the employee is receiving salary or wages that do not need to be taken into account. This difficulty can result in the employer being taken to have provided a smaller amount of superannuation support than should be the case.

#### *Recommendation 5*

The Committee recommends that the Government introduce legislation to cover the three technical aspects of the superannuation guarantee scheme noted above.

#### *Recommendation 6*

The Committee recommends that the Commissioner of Taxation issue a ruling on the issues of who is an employer and who is an employee as soon as practicable after the legislation is passed.

#### *Recommendation 7*

The Committee recommends that the provisions of the *Superannuation Guarantee (Administration) Bill 1992* should be regarded as a minimum benefit and thus should not override obligations above that minimum that may arise under an award superannuation provision. In respect to Recommendation 4(viii), the minimum of \$450 should not override any existing award superannuation provision where that award provision is lower.

## **OTHER ISSUES**

The Committee recommends that the Senate take note of the matters contained in the following paragraphs and that where appropriate, the Government introduce legislation before the end of the Budget Sittings 1992. Appendix F, *Government response to the issues raised by the Australian Democrats*, provides additional information on these matters.

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## PRUDENTIAL SUPERVISION OF SUPERANNUATION FUNDS

The Committee released its report 'Safeguarding Superannuation' on 4 June 1992. Its recommendations covered a number of matters, including codification of trustees' responsibilities and the establishment of dispute resolution mechanisms.

On 16 June 1992, the Government released a document 'Government Responses' which, among other things, provided its approach to the major recommendations which the Committee made. A precis of the Government's response to the Committee's main recommendations is below:

The Government accepts the recommendation that the Insurance and Superannuation Committee (ISC) be the sole regulator and that it liaise and co-ordinate with the Reserve Bank of Australia and the Australian Securities Commission.

The Government supports the codification of certain trust law principles for inclusion in OSSA.

The Government agrees to enhance the regulatory power of the ISC in terms of instituting penalties for breaches of the OSSA and removing Trustees and Directors where they have failed to meet fiduciary obligations.

The Government accepts that the current threshold for 200 members, before equal employer/employee representation is required, ought to be reduced.

The Government agrees that a central fund could be appropriate to reduce costs faced by individual funds managing inactive accounts.

The Government supports a requirement for members to be consulted before major changes to their funds are effected. It will also consider questions about the disposal of funds surplus to needs for defined benefits.

The Government will require that trustees who act as investment managers hold dealers' licences.

The Government supports efficiency gains through increased competition and will consider means to support increased competition through new entrants.

The Government is prepared to propose internal and external dispute resolution mechanisms for the industry.

The Government is examining the basis of its powers in superannuation matters and will consider widening the basis to include taxation, corporation and pension powers.

Finally, the Government is considering, in the context of prudential supervision, the situation where an employee refuses to join a complying fund. It also intends to propose amendments to OSSA to allow employees to contribute SGL with

respect to former employees, and to ensure, as far as is practicable, that SGL contributions are not made to non-complying superannuation funds.

The Committee welcomes the preparedness of the Government to respond to the Committee's recommendations so promptly. It notes that the Government intends to develop 'a detailed package of measures concerning prudential supervision for introduction to Parliament in the forthcoming Budget Settings'.

#### SUPERANNUATION POLICY ISSUES

The Paper 'Government Responses' also outlined a number of issues, and the Government's approach to them, which it is considering for the Treasurer's foreshadowed statement on Superannuation Simplification Policies. These are outlined below.

On preservation, the Government intends that, from 1 July 1993, all future superannuation benefits be preserved to the preservation age; and to consider increasing the preservation age so that by 2025 virtually all superannuation benefits are preserved to age 60. The Government indicated some flexibility to access benefits between age 55 and 60 would also be considered.

The Government intends to announce before 30 June 1992 its plans for an indexed, fixed cap on the lump sum for reasonable benefits limit purposes.

#### LINKAGES BETWEEN THE SGL AND WAGE INCREASES

The Committee received a number of submissions on this important question which touches on a number of issues fundamental to the SGL (such as timing of introduction; rate of increase in the SGL requirement; any SGL employment effects; and the appropriate maximum level of the SGL).

In his statement of 16 June 1992 (Government and Australian Democrats Agree on Superannuation Guarantee Bills) the Treasurer, the Hon John Dawkins, MP, expanded on the Government's announced policy that employers' contributions under SGL be taken into account in future wage decisions.

That statement announced the Government's agreement to an amendment to the Industrial Relations Act 1986 that would require the Industrial Relations Commission to take the SGL contributions into account in arriving at national wage case decisions.

#### SGL CONTRIBUTIONS MADE BY GROUP TRAINING COMPANIES AND COMMUNITY SERVICES

##### *Group Training Companies*

These companies are essentially formed to allow one entity to employ apprentices on behalf of a number of small businesses. The costs incurred by these companies are

passed on and are ultimately met by those small businesses. The Government considered the impact of the higher SGL that these companies might be required to meet (compared to their small business numbers) but indicated it was constrained in differentiating in law between these Group Training Companies and other like entities. Ultimately, all employers will face the same SGL rate, irrespective of payroll size, but the Government indicated it would consider providing grants to the Group Training Companies if that were necessary to reduce difficulties.

### *Community Services*

Community Services such as HACC and child care may be affected by the provisions of the legislation. Accordingly, this should be taken into account in relation to the funding of projects in these programs.