

## THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

## HOUSE OF REPRESENTATIVES

## VOTES AND PROCEEDINGS

No. 125

TUESDAY, 5 MAY 1992

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- 1 The House met, at 2 p.m., pursuant to adjournment. The Speaker (the Honourable Leo McLeay) took the Chair, and read Prayers.
  - 2 **QUESTIONS:** Questions without notice were asked.
  - 3 **PAPERS:** Mr Dawkins (Treasurer) presented the following papers:  
Superannuation—Answers to questions—Copies of letters and answers from A. J. Preston, Deputy Secretary (Structural and Taxation), the Treasury, to the—  
Secretary, Senate Estimates Committee B, 5 May 1992.  
Secretary, Senate Select Committee on Superannuation, 5 May 1992.
  - 4 **AUDITOR-GENERAL'S REPORTS—PUBLICATION OF PAPERS:** The Speaker presented the following papers:  
Audit Act—Auditor-General—Audit reports of 1991-92—  
No. 30—Project audit—Australian Taxation Office: Attendance and absences.  
No. 31—Project audit—Australian Taxation Office: Use and management of consultants.  
Mr Beazley (Leader of the House), by leave, moved—That:  
(1) this House, in accordance with the provisions of the *Parliamentary Papers Act 1908*, authorises the publication of the Auditor-General's audit reports Nos. 30 and 31 of 1991-92; and  
(2) the reports be printed.  
Question—put and passed.
  - 5 **DISCUSSION OF MATTER OF PUBLIC IMPORTANCE—MIGRATION CONTROL:**  
The House was informed that Mr Ruddock had proposed that a definite matter of public importance be submitted to the House for discussion, namely, "The Government's abysmal failure to maintain control of entry to Australia for permanent settlement".  
The proposed discussion having received the necessary support—  
*Anticipation rule—Statement by Speaker:* The Speaker stated that he had determined the matter of public importance to be in order notwithstanding that the first order of the day is the Migration Amendment Bill 1992, and reminded Members that they should not canvass discussion on that Bill.  
Mr Ruddock addressed the House.  
Discussion ensued.  
Discussion concluded.
  - 6 **MIGRATION AMENDMENT BILL 1992:** The order of the day having been read for the second reading—  
Mr Hand (Minister for Immigration, Local Government and Ethnic Affairs) moved—That the Bill be now read a second time.

*Paper:* Mr Hand presented an explanatory memorandum to the Bill.

Mr Ruddock moved, as an amendment—That all words after “That” be omitted with a view to substituting the following words: “whilst not declining to give the Bill a second reading, the House deplores the Government’s failure to reconstruct the immigration program to more accurately reflect the current needs of the national economy and to deliver a program that is in the long term interests of Australia”.

Debate continued.

Amendment negatived.

Question—That the Bill be now read a second time—put and passed—Bill read a second time.

The House resolved itself into a committee of the whole.

#### *In the committee*

Clause 1 agreed to.

Clause 2—

On the motion of Mr Hand the following amendment was made: Clause 2, page 1, line 6, after “2” insert “, 2A”.

Clause, as amended, agreed to.

*New clause—*

On the motion of Mr Hand, the following new clause was inserted in the Bill:

“2A. After Division 4A of Part 2 of the Principal Act the following Division is inserted:

#### **‘Division 4B—Custody of certain non-citizens**

##### **Reason for Division**

‘54J. This Division is enacted because the Parliament considers that it is in the national interest that each non-citizen who is a designated person should be kept in custody until he or she:

- (a) leaves Australia; or
- (b) is given an entry permit.

##### **Interpretation**

‘54K. In this Division:

“commencement” means the commencement of this Division;

“custody” means custody under this Act within the meaning of section 11, and includes being held in a processing area;

“designated person” means a non-citizen who:

- (a) has been on a boat in the territorial sea of Australia after 19 November 1989 and before 1 December 1992; and
  - (b) has not presented a visa; and
  - (c) is in Australia; and
  - (d) has not been granted an entry permit; and
  - (e) is a person to whom the Department has given a designation by:
    - (i) determining and recording which boat he or she was on; and
    - (ii) giving him or her an identifier that is not the same as an identifier given to another non-citizen who was on that boat;
- and includes a non-citizen born in Australia whose mother is a designated person;

“entry application”, in relation to a person, means an application for:

- (a) a determination by the Minister that the person is a refugee; or
- (b) an entry permit for the person.

**Designated persons to be in custody**

'54L.(1) Subject to subsection (2), after commencement, a designated person must be kept in custody.

'(2) A designated person is to be released from custody if, and only if, he or she is:

- (a) removed from Australia under section 54Q; or
- (b) given an entry permit under section 34 or 115.

'(3) This section is subject to section 54R.

**Beginning of custody of certain designated persons**

'54M.(1) If, immediately after commencement, a designated person is in a place described in paragraph 11(a) or a processing area, he or she then begins to be in custody for the purposes of section 54L.

'(2) If, immediately after commencement, a designated person is in the company of, and restrained by, a person described in paragraph 11(b), the designated person then begins to be in custody for the purposes of section 54L.

**Detention of designated person**

'54N.(1) If a designated person is not in custody immediately after commencement, an officer may, without warrant:

- (a) detain the person; and
- (b) take reasonable action to ensure that the person is kept in custody for the purposes of section 54L.

'(2) Without limiting the generality of subsection (1), that subsection even applies to a designated person who was held in a place described in paragraph 11(a) or a processing area before commencement and whose release was ordered by a court.

'(3) If a designated person escapes from custody after commencement, an officer may, without warrant:

- (a) detain the person; and
- (b) take reasonable action to ensure that the person is kept in custody for the purposes of section 54L.

**Removal from Australia of designated persons**

'54Q.(1) An officer must remove a designated person from Australia as soon as practicable if the designated person asks the Minister, in writing, to be removed.

'(2) An officer must remove a designated person from Australia as soon as practicable if:

- (a) the person has been in Australia for at least 2 months or, if a longer period is prescribed, at least that prescribed period; and
- (b) there has not been an entry application for the person.

'(3) An officer must remove a designated person from Australia as soon as practicable if:

- (a) there has been an entry application for the person; and
- (b) the application has been refused; and
- (c) all appeals against, or reviews of, the refusal (if any) have been finalised.

'(4) If:

- (a) 2 designated persons are liable to be removed from Australia under this section; and
- (b) they are the parents of another designated person in Australia who is under 18;

the other designated person is to be removed from Australia.

'(5) If:

- (a) a designated person is liable to be removed from Australia under this section; and
- (b) he or she is the only parent in Australia of another designated person in Australia who is under 18;

the other designated person is to be removed from Australia.

'(6) If:

- (a) 2 designated persons are liable to be removed from Australia under this section; and
- (b) they have the care and control of another designated person in Australia who:
  - (i) is under 18; and
  - (ii) does not have a parent who is a designated person;

the other designated person is to be removed from Australia.

'(7) If:

- (a) a designated person is liable to be removed from Australia under this section; and
- (b) he or she is the only person who has the care and control of another designated person in Australia who:
  - (i) is under 18; and
  - (ii) does not have a parent who is a designated person;

the other designated person is to be removed from Australia.

'(8) This section is subject to section 54R.

**No custody or removal after certain period**

'54R.(1) Sections 54L and 54Q cease to apply to a designated person who was in Australia on 27 April 1992 if the person has been in application custody after commencement for a continuous period of, or periods whose sum is, 273 days.

'(2) Sections 54L and 54Q cease to apply to a designated person who was not in Australia on 27 April 1992, if:

- (a) there has been an entry application for the person; and
- (b) the person has been in application custody, after the making of the application, for a continuous period of, or periods whose sum is, 273 days.

'(3) For the purposes of this section, a person is in application custody if:

- (a) the person is in custody; and
- (b) an entry application for the person is being dealt with;

unless one of the following is happening:

- (c) the Department is waiting for information relating to the application to be given by a person who is not under the control of the Department;
- (d) the dealing with the application is at a stage whose duration is under the control of the person or of an adviser or representative of the person;
- (e) court or tribunal proceedings relating to the application have been begun and not finalised;
- (f) continued dealing with the application is otherwise beyond the control of the Department.

**Courts must not release designated persons**

'54S. A court is not to order the release from custody of a designated person.

**Effect of Division on status etc.**

'54T.(1) This Division does not affect the other status that a designated person has under this Act except so far as the status is inconsistent with section 54L, 54M, 54N, 54Q or 54S.

'(2) This Division does not affect the rights of a designated person under this Act except so far as they, or their exercise, are inconsistent with section 54L, 54M, 54N, 54Q or 54S.

'(3) This Division does not affect any application made by a designated person under this Act except so far as the application, or the success of the application, is inconsistent with section 54L, 54M, 54N, 54Q or 54S.

**Division applies despite other laws**

'54U. If this Division is inconsistent with another provision of this Act or with another law in force in Australia, whether written or unwritten, other than the Constitution:

- (a) this Division applies; and
- (b) the other law only applies so far as it is capable of operating concurrently with this Division.

**Evidence**

'54V. A statement by an officer, on oath or affirmation, that the Department has given a particular person a designation described in paragraph (e) of the definition of "designated person" in section 54K is conclusive evidence that the Department has given that person that designation.'.

Remainder of Bill, by leave, taken as whole, and agreed to.

Bill, as amended, agreed to.

Bill to be reported with amendments.

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The House resumed; Mr Truss reported accordingly.

On the motion of Mr Hand, by leave, the House adopted the report, and, by leave, the Bill was read a third time.

7 **PAPER:** Mr Hand (Minister for Immigration, Local Government and Ethnic Affairs) presented the following paper:

Migration Amendment Bill 1992—Supplementary explanatory memorandum.

8 **SUPERANNUATION GUARANTEE CHARGE BILL 1992:** The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

Debate resumed by Mr Connolly who moved, as an amendment—That all words after "That" be omitted with a view to substituting the following words: "the House calls on the Government to withdraw this Bill and not proceed with the introduction of a compulsory superannuation scheme for Australians in light of the revelations, in evidence by Treasury officers to the Senate Select Committee on Superannuation, that there is no economic, financial or social justification for the Government's proposals, which will lead to even higher unemployment, reduce real wages, add to inflation and do nothing to provide genuine retirement income for the majority of Australians".

*Paper:* Mr Connolly, by leave, presented the following paper:

Superannuation—Senate Select Committee—Copy of letter, 8 October 1991, from Mr Alex Somlyay, MP, to Senator Nick Sherry, Chairman, Senate Select Committee on Superannuation, together with a copy of a submission to the committee from Mrs M. Belshaw.

Debate continued.

Question—That the words proposed to be omitted stand part of the question—put.

The House divided (the Deputy Speaker, Mr Dubois, in the Chair)—

## AYES, 67

Mr Baldwin	Mr Duffy	Mrs Jakobsen	Mr Punch
Mr Beazley	Mr Duncan	Mr Jenkins	Mr Sawford*
Mr Beddall	Mr R. F. Edwards	Mr Johns	Mr Scholes
Mr Bevis	Mr Elliott	Mr Jones	Mr J. L. Scott
Dr Blewett	Ms Fatin	Mr Langmore	Mr L. J. Scott
Mr Brereton	Mr Ferguson	Mr Lavarch	Mr Simmons
Mr R. J. Brown	Mr Free	Mr Lee	Mr Snow
Mr Campbell	Mr Gayler	Mr Lindsay	Mr Snowdon
Dr Catley	Mr Gear*	Ms McHugh	Mr Staples
Dr Charlesworth	Mr Gibson	Mr Martin	Dr Theophanous
Mr Cleary	Mr Griffiths	Mr Melham	Mr Tickner
Mr Courtice	Mr Hand	Mr A. A. Morris	Mr Walker
Ms Crawford	Mr Holding	Mr P. F. Morris	Mr West
Mr Crean	Mr Hollis	Mr Newell	Mr Willis
Mrs Crosio	Mr Howe	Mr O'Keefe	Mr H. F. Woods
Mrs Darling	Mr Hulls	Mr O'Neil	Mr Wright
Mr Dawkins	Mr Humphreys	Mr Price	

## NOES, 59

Mr Aldred	Mr Connolly	Dr Kemp	Mr Riggall
Mr Anderson	Mr Costello	Mr Lloyd	Mr Rocher
Mr J. N. Andrew*	Mr Dobie	Mr McArthur	Mr Ronaldson
Mr K. J. Andrews	Dr H. R. Edwards	Mr McGauran	Mr Ruddock
Mr Atkinson	Mr Filing	Mr Mack	Mr B. C. Scott
Mr Beale	Mr T. A. Fischer	Mr MacKellar	Mr Shack
Mr Bradford	Mr P. S. Fisher	Mr McLachlan	Mr Sharp
Mr Braithwaite	Mr Ford	Mr Miles	Mr Smith
Mr Broadbent	Mrs Gallus	Mr Moore	Mr Somlyay
Mr Cadman	Mr Goodluck	Mr Nehl	Mrs Sullivan
Mr Cameron	Mr Hall	Mr Nugent	Mr Taylor
Mr Carlton	Mr Hawker	Mr Peacock	Mr Truss
Mr Chaney	Mr Hicks*	Mr Prosser	Mr Tuckey
Mr Charles	Mr Howard	Mr Reid	Dr Wooldridge
Mr Cobb	Mr Jull	Mr Reith	

\* Tellers

And so it was resolved in the affirmative.

Question—That the Bill be now read a second time—put and passed—Bill read a second time.

Leave granted for third reading to be moved forthwith.

Mr Johns (Parliamentary Secretary to the Minister for Health, Housing and Community Services) moved—That the Bill be now read a third time.

Debate ensued.

Question—put and passed—Bill read a third time.

- 9 SUPERANNUATION GUARANTEE (ADMINISTRATION) BILL 1992: The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

Question—put and passed—Bill read a second time.

*Message from the Governor-General:* Message No. 255, dated 6 April 1992, from His Excellency the Governor-General was announced recommending an appropriation of revenue for the purposes of the Bill.

The House resolved itself into a committee of the whole.

*In the committee*

Bill, by leave, taken as a whole.

Mr Johns (Parliamentary Secretary to the Minister for Health, Housing and Community Services), by leave, moved the following amendments together:

*Amendments—*

## Clause 6—

Page 3, subclause (1), definition of “defined benefit superannuation scheme”, line 32, omit “superannuation” (where last occurring).

Page 4, subclause (1), definition of “ordinary time earnings”, lines 34 to 38, omit the definition, substitute the following definition:

“**‘ordinary time earnings’**, in relation to an employee, means:

- (a) the total of:
  - (i) earnings in respect of ordinary hours of work; and
  - (ii) earnings consisting of over-award payments, shift-loading or commission; or
- (b) if the total ascertained in accordance with paragraph (a) would be greater than the maximum contribution base for the contribution period—the maximum contribution base;”.

Page 5, subclause (1), definition of “public sector scheme”, line 1, omit “superannuation scheme”, substitute “scheme of superannuation”.

Page 5, subclause (1), definition of “superannuation scheme”, lines 22 to 24, omit paragraphs (a) and (b), substitute the following paragraphs:

- “(a) a defined benefit superannuation scheme whether or not embodied in the governing rules of a superannuation fund; or
- (b) any other scheme embodied in the governing rules of a superannuation fund;”.

Page 6, at the end of the clause add the following subclause:

“(3) For the purposes of this Act, a reference to salary or wages paid by an employer to an employee includes a reference to a payment made on behalf of the employer.”.

Clause 13, page 10, subclause (3), lines 8 to 11, omit the subclause, substitute the following subclause:

“(3) If an employee’s notional earnings base ascertained in accordance with subsection (2) in relation to a contribution period would be an amount greater than the maximum contribution base for that period, the employee’s notional earnings base is the maximum contribution base.”.

Clause 14, page 11, subclause (4), lines 8 to 11, omit the subclause, substitute the following subclause:

“(4) If an employee’s notional earnings base ascertained in accordance with subsection (2) in relation to a contribution period would be an amount greater than the maximum contribution base for that period, the employee’s notional earnings base is the maximum contribution base.”.

Clause 23—

Page 18, subclause (6), line 29, omit “Subject to subsection (8), a contribution to a”, substitute “A contribution to a complying”.

Page 18, lines 35 to 43 and page 19, lines 1 and 2, omit subclauses (7) and (8), substitute the following subclauses:

“(7) A contribution to a complying superannuation fund made by an employer for the benefit of an employee may be taken into account under this section as if it had been made during a particular contribution period commencing after 30 June 1993 if the contribution is made:

- (a) not more than 12 months before the beginning of the contribution period; or
- (b) not more than 28 days after the end of the contribution period.

“(8) A contribution to a superannuation fund made by an employer for the benefit of an employee that is taken into account under this section in relation to a contribution period is not to be taken into account under this section in relation to any other contribution period.”.

Clause 24, page 19, at the end of subclause (1) add the following paragraph:

“(d) salary or wages paid to an employee who is a prescribed employee for the purposes of this paragraph.”.

*New clause—*

After clause 62, page 37, insert the following new clause:

**Payment not subject to taxation**

“62A. An amount paid under section 61 or 62 is not subject to taxation under a law of the Commonwealth.”.

*Paper:* Mr Johns presented a supplementary explanatory memorandum to the Bill.

Mr Connolly addressing the committee—

It being 10.30 p.m.—Progress to be reported.

The House resumed; Mr Truss reported accordingly.

*Adjournment negatived:* The question was accordingly proposed—That the House do now adjourn.

Mr Johns requiring the question to be put forthwith without debate—

Question—put and negatived.

The House again resolved itself into a committee of the whole.

*In the committee*

Debate continued.

Amendments agreed to.

Question—That the Bill, as amended, be agreed to—put.

The committee divided (the Deputy Chairman, Mr Truss, in the Chair)—

## AYES, 68

Mr Baldwin	Mr Dubois	Mr Humphreys	Mr Price
Mr Beazley	Mr Duffy	Mrs Jakobsen	Mr Punch
Mr Beddall	Mr Duncan	Mr Jenkins	Mr Sawford*
Mr Bevis	Mr R. F. Edwards	Mr Johns	Mr Scholes
Dr Blewett	Mr Elliott	Mr Jones	Mr J. L. Scott
Mr Brereton	Ms Fatin	Mr Langmore	Mr L. J. Scott
Mr R. J. Brown	Mr Ferguson	Mr Lavarch	Mr Simmons
Mr Campbell	Mr Free	Mr Lee	Mr Snow
Dr Catley	Mr Gayler	Mr Lindsay	Mr Snowdon
Dr Charlesworth	Mr Gear*	Ms McHugh	Mr Staples
Mr Cleary	Mr Gibson	Mr Martin	Dr Theophanous
Mr Courtice	Mr Griffiths	Mr Melham	Mr Tickner
Ms Crawford	Mr Hand	Mr A. A. Morris	Mr Walker
Mr Crean	Mr Holding	Mr P. F. Morris	Mr West
Mrs Crosio	Mr Hollis	Mr Newell	Mr Willis
Mrs Darling	Mr Howe	Mr O'Keefe	Mr H. F. Woods
Mr Dawkins	Mr Hulls	Mr O'Neil	Mr Wright

## NOES, 56

Mr Aldred	Mr Cobb	Mr Howard	Mr Reith
Mr Anderson	Mr Connolly	Mr Jull	Mr Riggall
Mr J. N. Andrew*	Mr Costello	Dr Kemp	Mr Rocher
Mr K. J. Andrews	Mr Dobie	Mr Lloyd	Mr Ronaldson
Mr Atkinson	Mr Downer	Mr McArthur	Mr Ruddock
Mr Beale	Dr H. R. Edwards	Mr McGauran	Mr B. C. Scott
Mr Bradford	Mr Filing	Mr Mack	Mr Shack
Mr Braithwaite	Mr T. A. Fischer	Mr MacKellar	Mr Sharp
Mr Broadbent	Mr P. S. Fisher	Mr Miles	Mr Smith
Mr Cadman	Mr Ford	Mr Nehl	Mr Somlyay
Mr Cameron	Mrs Gallus	Mr Nugent	Mrs Sullivan
Mr Carlton	Mr Hall	Mr Peacock	Mr Taylor
Mr Chaney	Mr Hawker	Mr Prosser	Mr Tuckey
Mr Charles	Mr Hicks*	Mr Reid	Dr Wooldridge

\* Tellers

And so it was resolved in the affirmative.  
Bill to be reported with amendments.



The House resumed; Mr Truss reported accordingly.

On the motion of Mr Johns, by leave, the House adopted the report, and, by leave, the Bill was read a third time.

**10 SUPERANNUATION GUARANTEE (CONSEQUENTIAL AMENDMENTS) BILL**

**1992:** The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

Question—put and passed—Bill read a second time.

Leave granted for third reading to be moved forthwith.

On the motion of Mr Johns (Parliamentary Secretary to the Minister for Health, Housing and Community Services), the Bill was read a third time.

**11 ADJOURNMENT:** Mr Beazley (Leader of the House) moved—That the House do now adjourn.

Debate ensued.

The House continuing to sit until 11 p.m.—The Deputy Speaker adjourned the House until tomorrow at 10 a.m.

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**PAPERS:** The following papers were deemed to have been presented on 5 May 1992:

Defence Act—Determination under section 58B—1992—No. 14.

Military Superannuation and Benefits Act—Instrument—1992—No. 1.

Public Service Act—Determinations—1992—Nos. 128, 131, 132.

*States Grants (Schools Assistance) Act 1988*—Determination of amounts and approval of payments under section 17—SEP 92/8.

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**ATTENDANCE:** All Members attended (at some time during the sitting) except Mr Bilney, Mr Burr, Mr Cowan, Mr Fitzgibbon, Mr Grace, Mr Halverson, Mrs Kelly, Mr Kerin, Mr Kerr, Mr Sciacca\*, Mr Webster and Mr Wilson.

\*On leave

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**L. M. BARLIN**

Clerk of the House of Representatives