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Bills Digest
No. 170 2003–04

Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004

ISSN 1328-8091

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Published by Information and Research Services, Parliamentary Library,
Department of Parliamentary Services, 2004.

I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 170 2003–04

Superannuation Laws Amendment (2004 Measures No. 2)
Bill 2004

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22 June 2004

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Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004

Date Introduced: 27 May 2004

House: House of Representatives

Portfolio: Treasury

Commencement: Items 1 to 4 on Royal Assent, items 5 to 7 1 July 2010 and item 8 immediately after the commencement of item 29 of Schedule 1 to the Superannuation Safety Amendment Act 2004

Purpose

The purpose of the Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004 (the Bill) is to implement five measures of which:

- one was part of the *A Better Superannuation System*¹ announcement
- two were a part of the *A more flexible and adaptable retirement income system*² announcement
- one is the consequence of a yet to be implemented measure announced in the *A more flexible and adaptable retirement income system* announcement, and
- one is a technical amendment.

Background

The Howard Government, since the 1996 election, has made four major announcements regarding the retirement income system. These announcements are:

- *Recognising older Australians*³
- *Savings: Choice and Incentive*⁴
- *A Better Superannuation System*, and

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- *A more flexible and adaptable retirement income system*

The aims of the changes included in these four announcements were to provide greater access to superannuation, a more flexible system and the option for individuals to choose who will control their superannuation benefits.

Four of the five measures in the Bill relate to the last two major announcements on superannuation by the Government, namely, *A Better Superannuation System* and *A more flexible and adaptable retirement income system*.

The fifth measure is a technical amendment to changes made by the *Superannuation Safety Amendment Act 2004* that received Royal Assent on 27 April 2004 and which introduced new licensing requirements for superannuation entities and superannuation trustees.

Basis of policy commitment

A Better Superannuation System

Among the measures announced on 5 November 2001 in the *A Better Superannuation System* policy statement for the 2001 election, the government reaffirmed its commitment to choice and portability of superannuation. The measure in the Bill relates to the portability of superannuation benefits. The portability of superannuation benefits will commence from 1 July 2004 following the gazettal of the *Superannuation Industry (Supervision) Regulations 2003 (No. 5)*. The measure in the Bill is a small change to align the time frame imposed on retirement savings accounts (RSA) providers to action a portability request with that of other superannuation entities.

A more flexible and adaptable retirement income system

On 25 February 2004 the Treasurer released the *A more flexible and adaptable retirement income system* statement. The aim of the measures announced in the statement is to improve the accessibility, flexibility and integrity of the retirement income system and reduce red tape.⁵ The statement includes proposals to:

- remove the ‘work test’ for superannuation for those under 65 years age and simplify it for those over 65 years of age
- require superannuation funds to start paying benefits to a person as soon as practicable after they reach 75 years of age regardless of whether they continue to work
- permit superannuation entities, from 20 September 2004, to provide market-linked income stream products that will be treated as complying pensions and annuities for reasonable benefit limits, taxation and age pension purposes

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- make it easier for people to access their superannuation benefit once they reach their preservation age while still remaining in the workforce
- remove the notional earnings base provisions so that an employee's ordinary time earnings are used as the base for determining the amount of employer superannuation contributions needed to satisfy an employer's superannuation guarantee liability, and
- remove the requirement for superannuation funds that only pay allocated pensions to obtain an actuarial certificate, so that the income generated from the assets supporting the allocated pension is tax exempt.

To implement the majority of the changes proposed in the statement, amendments will need to be made to the *Superannuation Industry (Supervision) Regulations 1994* (the SIS Regulations). However, some changes will have to be implemented by amending acts. This Bill implements the last two changes above.

The amendments also add a condition that people less than 18 years of age need to satisfy before they can claim a tax deduction for personal superannuation contributions. This is a consequential amendment resulting from the measures included in the Treasurer's statement to remove the work test provisions for contributing to superannuation.

Main Provisions

Clause 4 provides that, of the amendments made in **Schedule 1**:

- **item 3** applies for the 2004-05 and subsequent years of income
- **item 4** applies to transfer requests made on or after the later of:
 - the 28th day after the day this Bill received Royal Assent, or
 - 1 July 2004, and
- **items 5 to 7** apply to quarters commencing on 1 July 2010 and subsequent quarters.

Schedule 1 - Amendments

Removing the requirement for superannuation funds to obtain an actuarial certificate if they only provide proscribed pensions

Item 1 inserts **proposed subsections 273A(2) and (3)** into the *Income Tax Assessment Act 1936* (ITAA 1936). Under these proposed subsections, where:

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- a complying superannuation fund has segregated, for tax purposes, assets used to solely support the payment of certain pensions, and
- those assets are prescribed by regulations,

the superannuation fund may provide those pensions without the need to obtain an actuarial certificate. If a complying superannuation fund provides a type of pension not prescribed in the regulations then they will continue to have to obtain an actuarial certificate in accordance with the current provisions in section 273A.

Item 2 inserts **proposed subsection 283(2A)** in the ITAA 1936. It removes the requirement for a complying superannuation fund to value its pension liabilities either by obtaining an actuarial certificate under subsection 283(3) or as calculated under subsection 283(4) if the pension liabilities are only in respect of pensions prescribed in the regulations.

It is expected that the types of pensions that will be prescribed in the regulations for the purposes of **proposed subsections 273A(2), 273A(3) and 283(2A)** will be allocated pensions.

Work test for personal contributions made by persons under 18 years of age

Item 3 inserts **proposed paragraph 26-80(3)(a)** into the *Income Tax Assessment Act 1997* (ITAA 1997). It imposes a work test on persons less than 18 years of age so that they cannot claim a tax deduction for personal superannuation contributions under section 82AAT of the ITAA 1936 unless they meet the conditions of the work test along with any other condition imposed by section 82AAT of the ITAA 1936 and subsection 26-80(3) of the ITAA 1997.

Portability time frames for RSA's

Item 4 amends subsection 50(2) of the *Retirement Savings Accounts Act 1997* so that when a holder of a RSA makes a request to transfer the amount of their RSA to another RSA or a superannuation fund the RSA provider will have 90 days, rather than the current 12 months, to complete the transfer.

Superannuation guarantee earnings bases

Item 5 repeals, with application from 1 July 2010, sections 13, 13A, 13B and 14 of the *Superannuation Guarantee (Administration) Act 1992* (the SGAA). Currently, these provisions permit employers to calculate their superannuation guarantee liability using an earnings base other than ordinary time earnings or salary and wages where the employer is subject to the agreements covered by the provisions.

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Item 6 will repeal subsections 23(2) to (5) of the SGAA that set out how an employer's liability to the superannuation guarantee charge is reduced using an earnings base defined in section 13, 13A, 13B and 14. **Item 6** also inserts **proposed subsection 23(2)** which specifies that an employee's ordinary time earnings will be used to determine the amount their employer will need to contribute to a superannuation fund, on behalf of the employee, so as to avoid the imposition of the superannuation guarantee charge in respect of that employee.

Item 7 repeals subsection 23(9) of the SGAA as it relates to the calculation of earnings bases under section 13, 13A, 13B and 14 that are repealed by **item 5**.

These amendments will benefit employees subject to notional earnings bases defined in the SGAA, as they will have their superannuation guarantee contributions calculated from a higher base. The result is employees who are currently subject to notional earnings bases defined in the SGAA will have, from 1 July 2010, larger superannuation guarantees contributions made on their behalf and, consequently, their retirement benefit will be larger.

Cancelling registrable superannuation entity licences

Item 8 makes a technical amendment to subsection 29G(1) of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) to correct a cross-referencing error that was inserted into the SIS Act by the *Superannuation Safety Amendment Act 2004*.

Concluding Comments

Overall, the amendments made in the Bill achieve the Government's objectives.

The amendments to implement the two measures announced as part of the statement, *A more flexible and adaptable retirement income system*, continue the Howard Government's reforms to the superannuation system. While the Howard Government's reforms continue to open up the superannuation system to people not in workforce, they do not address the main problem with the superannuation system, namely complexity. Both the Government and the Opposition continue to make announcements that tinker and fiddle with the superannuation system. Real reform of the superannuation system is required so that those who are able to finance their own retirement can do so without resorting to schemes to obtain access to welfare benefits and those who cannot sufficiently finance their own retirement can receive a benefit better than the age pension.

The amendments in the Bill relating to the removal of notional earnings bases do simplify the superannuation guarantee system, but they will add to the costs of some employers. Employers who are permitted to use the old notional earnings bases generally have a lower base from which they calculate their superannuation guarantee liability than if they used

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ordinary time earnings, therefore, reducing their costs. While this may be a concern to them, they do have six years in which to prepare for these changes. This should be more than enough time to adjust to the new earnings base for calculating superannuation guarantee contributions.

Endnotes

- 1 John Howard, *A Better Superannuation System*, Liberal Party of Australia, Melbourne, 5 November 2001. Available at:
<http://parlinfoweb.parl.net/parlinfo/Repository1/Library/partypol/X9G562.pdf>.
- 2 Department of the Treasury, *A more flexible and adaptable retirement income system*, Department of the Treasury, 25 February 2004. Available at:
http://demographics.treasury.gov.au/content/download/flexible_retirement_income_system/flexible_retirement_income_system.pdf.
- 3 The Hon Peter Costello MP, Treasurer of the Commonwealth of Australia, Senator the Hon Jocelyn Newman, Minister for Social Security, the Hon Judi Moylan MP, Minister for Family Services and the Hon Bruce Scott MP, Minister for Veterans' Affairs, *Recognising Older Australians*, 20 August 1996.
- 4 The Hon Peter Costello MP, Treasurer of the Commonwealth of Australia and Senator the Hon Jocelyn Newman, Minister for Social Security, *Savings: Choice and Incentive*, 13 May 1997.
- 5 Peter Costello, *A More Flexible and Adaptable Retirement Income System*, Press Release, no. 11, Canberra, 25 February 2004. Available at:
<http://parlinfoweb.parl.net/parlinfo/Repository1/Media/pressrel/6MRB61.pdf>.

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