



Superannuation Legislation Amendment (Simplification) Bill 2007

Leslie Nielson
Economics Section

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Superannuation Legislation Amendment (Simplification) Bill 2007

Date introduced: 7 February 2007

House: House of Representatives

Portfolio: Treasury

Commencement: Alternatively either with Royal Assent, on 1 July 2007 or immediately after the commencement of other Acts to which this Bill relates. These Acts are:

- Tax Laws Amendment (Simplified Superannuation) Act 2007 (for changes in Schedule 1)
- Tax Laws Amendment (2006 Measures No. 7) Act 2007 (for changes in Schedules 2 and 4)
- Bankruptcy Legislation Amendment (Superannuation Contributions) Act 2007 (for changes in Schedule 3).

The Bills on which the latter three Acts are based are currently before Parliament.

Purpose

The changes in this Bill are related to the proposed changes in the Tax Laws Amendment (Simplified Superannuation) Bill 2006 (Main Bill).

This Bill seeks to simplify the current raft of complex tax arrangements and remove restrictions that apply to superannuation benefits. The aim of these changes is to provide retirees with greater flexibility as to how and when they draw down their superannuation benefits.

This Bill also rewrites superannuation taxation provisions from the *Income Tax Assessment Act 1936* (ITAA36) into the *Income Tax Assessment Act 1997* (ITAA97). These changes will consolidate the main provisions of the superannuation legislation into one place and redraft existing provisions into a contemporary and consistent style.

This Bill makes:

- consequential amendments necessary due to the rewrite of superannuation taxation law
- minor additions to the laws giving effect to the *Simplified Superannuation* reforms, and
- amendments to enable future flows of unclaimed superannuation monies to be paid to the Australian Government.¹

Warning:

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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

This Bill amends a significant number of other Acts in support of these objectives. It repeals the *Income Tax (Superannuation Payments Withholding Tax) Act 2002*.

Background

The changes made by these Bills are consequential ones flowing from the passage of the Tax Laws Amendment (Simplified Superannuation) Bill 2006 (Main Bill) now before Parliament. As such, the background to these changes is set out in the Library's Bills Digest on the Tax Laws Amendment (Simplified Superannuation) Act 2006 and the Bankruptcy Legislation Amendment (Superannuation Contributions) Act 2007.²

Basis of policy commitment

These changes were first announced in the Budget speech for the 2006–07 budget.³ Since then the Government has made significant changes to the first announced proposals in response to consultation with both industry and the wider public. The announcement of these later changes was given in a series of press releases from the Treasurer and Assistant Treasurer and Minister for Revenue during the latter half of 2006.⁴

Position of significant interest groups/press commentary

These comments are set out Library's Bills Digest on the Tax Laws Amendment (Simplified Superannuation) Bill 2006 and the Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2007.⁵

Pros and cons

Arguments for and against the provisions of the overall superannuation simplification package are set out Library's Bills Digest on the Tax Laws Amendment (Simplified Superannuation) Bill 2006.⁶

ALP/Australian Democrat/Greens/Family First policy position/commitments

Political comments on the overall superannuation simplification package are set out in Library's Bills Digest on the Tax Laws Amendment (Simplified Superannuation) Bill 2006.⁷

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Financial implications

There are no financial implications arising from this particular Bill. The financial implications of the overall superannuation simplification package are discussed in the Library's Bills Digest on the Tax Laws Amendment (Simplified Superannuation) Act 2006.⁸

Main provisions

General comment

The overwhelming majority of the provisions of this Bill are either:

- integrity measures to ensure the effectiveness of the provision of the Tax Laws Amendment (Simplified Superannuation) Bill 2006 (currently before Parliament)
- corrections of drafting errors in the above Bill and in current legislation, or
- useful, but very minor, changes to current superannuation legislation or the provisions of the main Bill.

Accordingly, few of the provisions in this Bill enact new policy (for a new policy item, see the discussion in relation to Schedule 3 under Main Provisions below). The Explanatory Memorandum provides sufficient comment on these provisions.

Tax file numbers

The Main Bill contains provisions that require a superannuation fund member, or their employer, to quote the member's tax file number to that member's superannuation fund (**item 27, Schedule 1, Main Bill**).

Item 117, Schedule 1 of this Bill changes new **section 202DHA** to ensure that the ability of an employer to quote a tax file number to a superannuation provider is not retrospective, that is this provision does not apply tax file numbers given to an employer before 1 July 2007.

Comment

This change may require all current employees to either again quote their tax file numbers to their employer after 1 July 2007 or authorise an employer to quote their tax file numbers to the superannuation provider. Such a procedure could be seen as clumsy and inefficient.

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New policy

Schedule 3 of this Bill contains provisions that enact significant new policy items.

Item 54 of this Bill requires that a person, who becomes a trustee of a Self Managed Superannuation Fund (SMSF) on or after 1 July 2007, must sign a declaration that they understand the duties of this position.

This is a new requirement for SMSF trustees. Significant penalties apply if they fail to meet this requirement no later than 21 days after becoming a SMSF trustee. Further, significant penalties also apply if they fail to retain such a declaration for at least 10 years.

Comment

Currently, the number of SMSFs is growing at an extremely fast rate. Press comment suggests that this is due to the generous transitional provisions applying to superannuation contributions in the Main Bill.⁹ Further, The Australian Taxation Office has expressed concern about the level of experience that SMSF trustees have before taking up their duties.¹⁰

Many SMSFs are set up with the assistance of specialised financial planners or accountants. Often these advisers/accountants will undertake most if not all the administrative tasks and investment decision making in return for a fee. However, they are not responsible for the decisions made, the trustees are. Requiring new SMSF trustees to sign such a declaration sheets home the responsibilities of being a SMSF trustee. Further, it potentially removes the defence of 'ignorance' from the trustee if the administration or investment decisions of the SMSF cuts across the legal requirements applying to such funds.

Items 58 and 59 of **Schedule 3** of this Bill amend **section 18** of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*. The effect of these items is that the ability for a superannuation fund provider to pay lost or unclaimed superannuation monies to a State based authority (i.e. a State Receiver of unclaimed Monies) is restricted only to a State or Territory government superannuation provider. All private sector superannuation providers will have to pay any lost or unclaimed superannuation money, in their keeping on or after 1 July 2007, to the Commonwealth.

Endnotes

1. The Hon. Peter Costello MP, Treasurer, Explanatory Memorandum to the Superannuation Legislation Amendment (Simplification) Bill 2007, the Income Tax Amendment Bill 2007, the Income Tax (Former Complying Superannuation Funds) Amendment Bill 2007, the Income Tax (Former Non-Resident Superannuation Funds) Amendment Bill 2007 and the

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- Income Tax Rates Amendment (Superannuation) Bill 2007, 7 February 2007, p. 3. This document hereafter known as the EM.
2. Leslie Nielson, 'Tax Laws Amendment (Simplified Superannuation) Bill 2006' *Bills Digest*, no. 65, Parliamentary Library, Canberra, 2006/07. and 'Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2007', *Bills Digest*, no. 91, Parliamentary Library, Canberra, 2006–07.
 3. The Hon. Peter Costello MP, Treasurer, Second Reading Speech, Appropriation Bill No. 1 2006–07, House of Representatives, Debates, 9 May 2006, p. 57.
 4. Treasury, *A Plan to Simplify and Streamline Superannuation - Detailed Outline*, 9 May 2006, *A Plan to Simplify and Streamline Superannuation – Outcome of Consultation*, 5 September 2006, The Hon. Peter Costello MP, 'A Plan To Simplify and Streamline Superannuation – Transitional Issues That Apply Immediately', Media Release, No 57 of 2006, 14 June 2006. 'Simplified Superannuation – Final Decisions', Media Release, No 93 of 2006, 5 September 2006.
 5. Nielson, 'Tax Laws Amendment (Simplified Superannuation) Bill 2006', op. cit.
 6. Nielson, Tax Laws Amendment (Simplified Superannuation) Bill, op. cit.
 7. *ibid.*
 8. *ibid.*
 9. John Wasilliev, 'ATO warns on super fund risks', *Australian Financial Review*, 12 February 2007, p. 1, 12.
 10. John Wasilliev, *ibid.*

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