SENATE STANDING COMMITTEE

FOR THE

SCRUTINY OF BILLS

NINTH REPORT

OF

2006

18 October 2006

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MEMBERS OF THE COMMITTEE

Senator R Ray (Chair)
Senator B Mason (Deputy Chair)
Senator G Barnett
Senator D Johnston
Senator A McEwen
Senator A Murray

TERMS OF REFERENCE

Extract from **Standing Order 24**

(1) (a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:

(i) trespass unduly on personal rights and liberties;

(ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;

(iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;

(iv) inappropriately delegate legislative powers; or

(v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

(b) The Committee, for the purpose of reporting upon the clauses of a bill when the bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

NINTH REPORT OF 2006

The Committee presents its Ninth Report of 2006 to the Senate.

The Committee draws the attention of the Senate to clauses of the following bills which contain provisions that the Committee considers may fall within principles 1(a)(i) to 1(a)(v) of Standing Order 24:

Aged Care Amendment (Residential Care) Bill 2006

Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Repeal Bill 2006

Tax Laws Amendment (2006 Measures No. 4) Bill 2006

Aged Care Amendment (Residential Care) Bill 2006

Introduction

The Committee dealt with this bill in *Alert Digest No. 11 of 2006*. The Minister for Ageing responded to the Committee's comments in a letter dated 17 October 2006. A copy of the letter is attached to this report.

Extract from Alert Digest No. 11 of 2006

Introduced into the Senate on 13 September 2006
Portfolio: Health and Ageing

Background

This bill amends the *Aged Care Act 1997* to provide for income streams and assets that have been disposed of (gifts) to be treated the same way under the aged care assets test as they are for the purposes of the pension assets test under the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986*. The aged care assets test is undertaken to determine whether a person is eligible for subsidised aged care accommodation costs. The changes will apply to people who undergo an assets test on or after 1 January 2007.

The bill also allows for the Secretary to the Department of Health and Ageing to delegate certain functions and powers to members of Aged Care Assessment Teams in relation to the formal approval of applications for respite care extensions.

The bill also contains application provisions.

Retrospective application
Schedule 1, item 3

Item 3 of Schedule 1 to this bill provides that when determining an amount under paragraph 44-10(1C)(b) of the Act, the Secretary must take into account assets that a person has disposed of on or after 10 May 2006. As a matter of practice, the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people.

In this case, the second reading speech mentions that these changes were announced in the 2006-2007 Budget, which presumably explains the choice of date. Neither the explanatory memorandum nor the second reading speech explains whether (as appears to be the case) the retrospective application will detrimentally affect some persons. The Committee notes that the explanatory memorandum merely paraphrases the two provisions of the bill. The Committee **seeks the Minister's advice** whether this retrospective application will detrimentally affect some persons, and whether the proposal to make these changes has been widely publicised among those likely to be affected.

Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Relevant extract from the response from the Minister

The Bill amends the *Aged Care Act 1997* to give effect to 2006-07 Budget Measure announcing changes to the treatment of income streams and any assets that have been given away prior to entry into permanent residential aged care.

It lines up the aged care arrangements with the pension arrangements for the treatment of these assets and will simplify the interaction of the aged care and pension arrangements, allowing greater transparency and facilitating wise financial planning for older Australians. The new arrangements will be fairer to all residents and less confusing for them, their carers and their families.

The Measure builds on the Government's ongoing efforts to streamline the administration of aged care, in response to the recommendations of the 2003-04 *Review of Pricing Arrangements in Residential Aged Care.*

The changes will result in a more sustainable system in the long term, providing savings of approximately $71.7 million of administered costs over five years.

The Bill also simplifies access to extended residential respite care and will reduce red tape for industry and residents.

SCHEDULE 1 - Harmonising aged care and pension requirements in relation to income streams and asset disposals

Alert Digest No. 11 of 2006 issued on 11 October 2006 expressed concern with the retrospective application of Schedule 1, item 3. This item provides that when

determining an amount under paragraph 44-10(1C)(b) of the Act, the Secretary must take into account assets that a person has disposed of on or after 10 May 2006.

The Committee is asked to note:

- This measure does not commence until 1 January 2007.
- The effect of this amendment Bill is that from 1 January 2007, people who enter residential aged care or move to another home and need an assets assessment will have any gifts they have made from the day after Budget night (10 May 2006) considered in that assessment. This date was selected to discourage people from giving away assets after the announcement of the change and before commencement of the new arrangements specifically in order to obtain government assistance with their accommodation costs when otherwise they could use those assets to pay their accommodation costs.
- Around 90 per cent of people in or entering residential aged care are pensioners. The gifting provisions that this Bill seeks to apply for aged care assets test purposes from 1 January 2007 have applied for pension assets test purposes since May 2002. Therefore the vast majority of people entering residential aged care will already have had their assets assessed for pension purposes, including a consideration of any gifting before they undergo an aged care assets assessment.
- The assets assessment for entry to residential care is not compulsory unless a person is seeking government assistance with their accommodation costs. Currently, assets that have been given away by a person needing residential care are not counted in the aged care assets test, but are included in the pension assets test and may reduce the amount of age pension a person receives.
- People already in care or people entering or moving between residential aged care homes up to and including 31 December 2006 will not be affected by this measure.
- The assessment rules will be the same as for pensions, and therefore the first $10,000 in any financial year or $30,000 over five financial years which has been gifted will not count in the assessment of assets.
- The effect of this measure will be that a person will not be able to give away assets to qualify for government assistance with their aged care accommodation costs. It tightens the rules and closes a loophole in respect of gifting.
- These changes do not, of course, prevent people from giving away their assets.

Effect of giving away significant assets

The number of people who give away assets in order to qualify for government assistance with their accommodation costs is very small (estimated at less than 4% of

entrants to care). People who give away their assets between 10 May 2006 and 1 January 2007 would be an even smaller group.

As such gifts will be counted from 1 January 2007 for the purpose of calculating an accommodation payment. The change makes it more difficult for residents of aged care homes to seek to rely on the taxpayer for their aged care accommodation if they can pay for it themselves.

The *Aged Care Act 1997* contains Hardship provisions and people either before or after entry to residential aged care who find they are unable to meet the cost of their care can apply for this extra help.

This from time to time includes people who are not eligible for Concessional Supplement because they have owned a home within the last two years (see s44-7 (1)(b)).

In some cases this may be because the home has been given away. Scrutiny in these cases is very intense.

Assistance with Hardship can include

- Paying the equivalent of Concessional Supplement of Pensioner Supplement; and or
- Setting the Basic Daily Care Fee to zero; and or
- Setting the Income Tested fee to zero.

Individuals who find they are unable to enter care because they have given away assets, especially between 10 May 2006 and 31 December 2006 will be able to apply for hardship. They would need to establish a case that they gifted those assets without knowing the implications for the aged care asset test, and that as a result they are suffering hardship in relation to their ability to meet aged care costs.

Application of the assets changes

It is not accepted that these changes are retrospective. There is a distinction at law between legislation **having a prior effect on past events** and legislation **basing future action on past events**. The proposed changes fall into the second category, and would not be considered to have a retrospective operation. An example of a change that would fit into the first category, and would be considered to have a retrospective operation, would be if people who entered residential care between 10 May 2006 and 31 December 2006 were to lose their concessional resident status on commencement of the proposed amendments on 1 January 2007 because of a change in the way the assets test was applied to them.

The changes will apply to any gifts made by prospective residents from 10 May 2006, after the Budget announcement. This was announced in the Budget.

Community Views

The Senate Community Affairs Committee held an inquiry into this Bill. There were five submissions to this Inquiry, none of which raised the inclusion of gifts made from 10 May 2006 as an issue of concern. The National Seniors Agency appeared at the public hearing on 4 October 2006 and again this was not raised as an issue of concern. Their view was that the Bill 'will overwhelmingly elicit support' from their membership.

Publicity

The change has not yet been legislated, and therefore efforts to date in publicizing the change have been modest, but have included:

- Inclusion in Budget paper No 2
- A press release by the Minister on Budget night; and
- An article in the spring edition of *News for Seniors*. This publication is distributed by Centrelink to around 2.3 million pensioners. A further article is planned for the Summer edition.

A communication strategy has been developed to inform people of the new arrangements. This includes:

- Press advertising after the legislation is passed. Consumers, aged care facilities, financial advisers and industry peak bodies will be targeted during the campaign.
- An information brochure will be distributed to all existing residents and or their nominees and industry peak bodies.
- Publications produced by the Department of Health and Ageing on aged care and residential care fees and charges will be updated to include information on the new arrangements. These materials are also available on the Department's website at www.health.gov.au.

The Committee thanks the Minister for this response.

Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Repeal Bill 2006

Introduction

The Committee dealt with this bill in *Alert Digest No. 11 of 2006*. The Parliamentary Secretary to the Treasurer responded to the Committee's comments in a letter dated 17 October 2006. A copy of the letter is attached to this report.

Extract from Alert Digest No. 11 of 2006

Introduced into the House of Representatives on 13 September 2006
Portfolio: Treasury

Background

Introduced with the Housing Loans Insurance Corporation (Transfer of Pre-transfer Contracts) Bill 2006, this bill will repeal the *Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Act 1996* following the transfer, by the Commonwealth, of the ownership of pre-transfer contracts, to which the Housing Loans Insurance Corporation was a party prior to its abolition on 12 December 1997.

The bill also provides for the Commonwealth to pay a reasonable amount of compensation should any acquisition of property not be on just terms, consistent with section 519(xxxi) of the Constitution. The bill provides for the Consolidated Revenue Fund to be appropriated for this purpose.

Commencement
Schedules 1 and 2

By virtue of item 2 in the Table to subclause 2(1) of this bill, the amendments proposed in Schedules 1 and 2 would commence on the later of the day after Assent and the day which the Treasurer specifies as that on which the Government transfers those insurance contracts which were written by the former Housing Loans Insurance Corporation, and which the Government still retains.

The item goes on to provide that Schedules 1 and 2 will not commence if no such transfer takes place. The Parliamentary Secretary to the Treasurer has acknowledged in his second reading speech that neither this bill nor the Housing Loans Insurance Corporation (Transfer of Pre-Transfer Contracts) Bill 2006 (which is the measure authorising that transfer) commit the Government to a transfer, but merely 'provide the necessary framework to enable any transfer of the contracts to occur, if desired.' The Committee **seeks the Treasurer's advice** whether item 2 of the Table in subclause 2(1) might be amended to set a time limit within which either Schedules 1 and 2 of this bill will commence (because the relevant transfer has taken place) or the bill will be deemed to have been wholly repealed.

Pending the Treasurer's advice, the Committee draws Senators' attention to the provision, as it may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Relevant extract from the response from the Parliamentary Secretary

I am responding on behalf of the Treasurer as the Housing Loans Insurance Corporation and associated matters fall within my portfolio responsibility.

The Committee sought advice on whether time limits in relation to Schedules 1 and 2 of the Bill should be included. The Committee also asked whether the Bill might trespass unduly on personal rights and liberties.

A time limit was not included in either Schedule 1 or Schedule 2 as the eventual timing of any transfer and vesting of the Commonwealth's portfolio of pre-transfer contracts is not known. As I stated in the introductory speeches in the House of Representatives, the Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Repeal Bill 2006 together with the Housing Loans Insurance Corporation (Transfer of Pre-Transfer Contracts) Bill 2006 provide the framework to allow the vesting of the portfolio to occur but do not commit the Government to a transfer. Given the previous unsuccessful attempts to dispose of the Corporation, the Government considers it prudent not to anticipate how long it may take to achieve an eventual transfer of the portfolio. The Bills provide the Government with the flexibility to finalise administrative matters relating to the transfer without the need for further legislative amendment.

Additionally, it would not be in the Commonwealth's interests to set a timeframe for a repeal of the existing law prior to any vesting of the contracts in an acquirer, as this would extinguish the Commonwealth's legal responsibility for the contracts and render inoperative certain instruments that are currently in force. The Bills that I

have introduced seek to enable the Commonwealth wholly to divest its interests in the pre-transfer contracts to an acquirer. On vesting of the contracts in an acquirer, all rights and obligations of the Commonwealth under the contracts will become rights and liabilities of the acquirer. All rights and obligations continue to be preserved and the acquirer becomes the successor in law to the contracts.

As noted in the Explanatory Memorandum, the current law preserves the effect of instruments that were in force immediately before the 1997 transfer day to which the Corporation was a party or which referred to the Corporation. The Australian Government Solicitor has advised that repealing the current law, without vesting ownership of the contracts to an acquirer, would have the undesired effect of referring to the Corporation which no longer exists. To avoid this, the Housing Loans Insurance Corporation (Transfer of Pre-Transfer Contracts) Bill 2006 will preserve the rights and liabilities under the pre-transfer contracts and the effect of instruments currently in force by providing that references to the Corporation will become references to the acquirer on the vesting day. The existing law should not be repealed without the transfer of the contracts also occurring. For this reason, these two Bills should be considered as a package.

During the drafting process, consideration was given to the potential impact that the vesting may have on properties rights associated with the remaining contracts. However as the contracts and policies are held by lenders, rather than individual borrowers, the transfer was not considered to affect personal rights or liberties.

I have provided a copy of this letter to the Treasurer.

The Committee thanks the Parliamentary Secretary for this response.

Tax Laws Amendment (2006 Measures No. 4) Bill 2006

Introduction

The Committee dealt with this bill in *Alert Digest No. 7 of 2006*. The Minister for Revenue and Assistant Treasurer responded to the Committee's comments in a letter dated 10 October 2006. A copy of the letter is attached to this report.

Extract from Alert Digest No. 7 of 2006

Introduced into the Senate on 22 June 2006
Portfolio: Treasury

Background

This bill amends the *Income Tax Assessment Act 1997*, the *Income Tax (Transitional Provisions) Act 1997*, the *Income Tax Assessment Act 1936* and the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* to:

- extend the marriage breakdown capital gains tax roll-over to assets transferred under a binding financial agreement or an arbital award;
- amend the consolidation provisions to ensure that the integrity provision that requires certain roll-overs to be ignored for tax cost setting purposes does not apply to a consolidated group or multiple entry consolidated group that forms after a demerger;
- amend the simplified imputation scheme to ensure that Australian companies receive franking credits attached to non-assessable non-exempt distributions income from New Zealand companies that have elected into the Australian imputation system; and
- narrow the range of assets on which a foreign resident will be liable to capital gains tax to Australian real property and the business assets of a foreign resident's Australian permanent establishment.

The bill also contains application, consequential and transitional provisions.

Retrospective commencement
Schedules 3, items 1 to 5

Item 4 in the table to subclause 2(1) of this bill provides for the amendments proposed by items 3 to 5 of Schedule 3 in relation to the simplified imputation system to commence on 13 December 2005. The Committee also notes that items 2 and 5 provide that the amendments proposed by items 1, 3 and 4 will apply to dividends paid on or after 1 April 2003, the commencement of the trans-Tasman imputation measures. As a matter of practice, the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. While the Committee notes the explanation in the explanatory memorandum regarding the retrospective application of the amendments and that the 'amendments will ensure that the income tax law operates as intended and will benefit affected taxpayers', the Committee **seeks the Treasurer's advice** as to the reason for the retrospective commencement of items 3 to 5 on 13 December 2005.

Pending the Treasurer's advice, the Committee draws Senators' attention to the provision, as it may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Relevant extract from the response from the Assistant Treasurer

Schedule 3 to the Bill amends the trans-Tasman imputation provisions. Under those provisions, Australian franking credits flow through to an Australian shareholder who holds shares in a New Zealand company. The provisions apply only if the New Zealand company elects to maintain an Australian franking account reflecting Australian tax paid.

A problem arises under the current law if a New Zealand company pays a franked dividend to an Australian company where that dividend is non-assessable non-exempt income of the Australian company. In these circumstances, a franking credit does not currently arise in the Australian company's franking account.

The amendments in Schedule 3 to the Bill 2006 correct this anomaly. That is, consistent with the original policy intent, the amendments ensure that franking credits arise in the franking account of the Australian company even though the dividend is non-assessable non-exempt income.

Items 3 to 5 of Schedule 3 (the foreign dividend account amendments) make consequential amendments to the former foreign dividend account rules. Under those

rules, foreign dividends received by an Australian company that are non-assessable non-exempt income were generally credited to the company's foreign dividend account because no portion of the dividend could generate Australian franking credits.

The foreign dividend account amendments ensure that the company's foreign dividend account is debited when a credit arises in its franking account because of the amendments in Schedule 3. If the foreign dividend account rules were not modified, a double benefit would arise to the Australian company - that is, a credit would arise in both its franking account and its foreign dividend account.

The amendments in Schedule 3, which apply from 1 April 2003 (the date that the trans-Tasman imputation regime commenced), generally commence on Royal Assent. However, the foreign dividend account amendments commence on 13 December 2005.

As the foreign dividend account provisions have been replaced by the conduit foreign income rules with effect from 14 December 2005, the foreign dividend account amendments need to commence before that date to be legally effective.

The practical effect of Schedule 3 is that if an Australian company received a franked dividend that is affected by the amendments between 1 April 2003 and Royal Assent, a franking credit will arise in the company's franking account on the day that the dividend was paid. However, that franking credit will be recognised only after Royal Assent - that is, once the new law commences. In addition, if the franked dividend was paid between 1 April 2003 and 14 December 2005 and a credit had previously arisen in the company's foreign dividend account, a debit will arise in the company's foreign dividend account at the same time that the credit arises in its franking account.

Finally, I confirm that the amendments in Schedule 3 were sought by, and are beneficial to, affected taxpayers.

I trust this information is of assistance.

The Committee thanks the Assistant Treasurer for this response.

Robert Ray
Chair

Senator the Hon. Santo Santoro

Senator for Queensland
Minister for Ageing

17 October 2006

Senator Robert Ray
Chair
Senate Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

Dear Senator Ray

I refer to the letter of 12 October 2006 from Jeanette Radcliffe, Secretary of the Senate Standing Committee for the Scrutiny of Bills. Ms Radcliffe's letter sought a response to the comments relating to the Aged Care Amendment (Residential Care) Bill 2006, contained in the Scrutiny of Bills Alert Digest No. 11 of 2006.

Attached is my response to these comments. You may also care to note that the Senate Standing Committee on Community Affairs considered the Bill on 4 October 2006, and provided unanimous support for the Bill to be passed without amendment.

The Bill was passed in the Senate on Monday 16 October 2006.

Yours sincerely,

SANTO SANTORO
Senator for Queensland
Minister for Ageing

enclosure

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Senate Standing Committee for the Scrutiny of Bills

Aged Care Amendment (Residential Care) Bill 2006

Response from the Minister for Ageing

The Bill amends the *Aged Care Act 1997* to give effect to 2006-07 Budget Measure announcing changes to the treatment of income streams and any assets that have been given away prior to entry into permanent residential aged care.

It lines up the aged care arrangements with the pension arrangements for the treatment of these assets and will simplify the interaction of the aged care and pension arrangements, allowing greater transparency and facilitating wise financial planning for older Australians. The new arrangements will be fairer to all residents and less confusing for them, their carers and their families.

The Measure builds on the Government's ongoing efforts to streamline the administration of aged care, in response to the recommendations of the 2003-04 *Review of Pricing Arrangements in Residential Aged Care.*

The changes will result in a more sustainable system in the long term, providing savings of approximately $71.7 million of administered costs over five years.

The Bill also simplifies access to extended residential respite care and will reduce red tape for industry and residents.

SCHEDULE 1 - Harmonising aged care and pension requirements in relation to income streams and asset disposals

Alert Digest No. 11 of 2006 issued on 11 October 2006 expressed concern with the retrospective application of Schedule 1, item 3. This item provides that when determining an amount under paragraph 44-10(1C)(b) of the Act, the Secretary must take into account assets that a person has disposed of on or after 10 May 2006.

The Committee is asked to note:

- This measure does not commence until 1 January 2007.
- The effect of this amendment Bill is that from 1 January 2007, people who enter residential aged care or move to another home and need an assets assessment will have any gifts they have made from the day after Budget night (10 May 2006) considered in that assessment. This date was selected to discourage people from giving away assets after the announcement of the change and before commencement of the new arrangements specifically in order to obtain government assistance with their accommodation costs when otherwise they could use those assets to pay their accommodation costs.

- Around 90 per cent of people in or entering residential aged care are pensioners. The gifting provisions that this Bill seeks to apply for aged care assets test purposes from 1 January 2007 have applied for pension assets test purposes since May 2002. Therefore the vast majority of people entering residential aged care will already have had their assets assessed for pension purposes, including a consideration of any gifting before they undergo an aged care assets assessment.

- The assets assessment for entry to residential care is not compulsory unless a person is seeking government assistance with their accommodation costs. Currently, assets that have been given away by a person needing residential care are not counted in the aged care assets test, but are included in the pension assets test and may reduce the amount of age pension a person receives.

- People already in care or people entering or moving between residential aged care homes up to and including 31 December 2006 will not be affected by this measure.

- The assessment rules will be the same as for pensions, and therefore the first $10,000 in any financial year or $30,000 over five financial years which has been gifted will not count in the assessment of assets.

- The effect of this measure will be that a person will not be able to give away assets to qualify for government assistance with their aged care accommodation costs. It tightens the rules and closes a loophole in respect of gifting.

- These changes do not, of course, prevent people from giving away their assets.

Effect of giving away significant assets

The number of people who give away assets in order to qualify for government assistance with their accommodation costs is very small (estimated at less than 4% of entrants to care). People who give away their assets between 10 May 2006 and 1 January 2007 would be an even smaller group.

As such gifts will be counted from 1 January 2007 for the purpose of calculating an accommodation payment. The change makes it more difficult for residents of aged care homes to seek to rely on the taxpayer for their aged care accommodation if they can pay for it themselves.

The *Aged Care Act 1997* contains Hardship provisions and people either before or after entry to residential aged care who find they are unable to meet the cost of their care can apply for this extra help.

This from time to time includes people who are not eligible for Concessional Supplement because they have owned a home within the last two years (see s44-7 (1)(b)).

In some cases this may be because the home has been given away. Scrutiny in these cases is very intense.

Assistance with Hardship can include

- Paying the equivalent of Concessional Supplement of Pensioner Supplement; and or
- Setting the Basic Daily Care Fee to zero; and or
- Setting the Income Tested fee to zero.

Individuals who find they are unable to enter care because they have given away assets, especially between 10 May 2006 and 31 December 2006 will be able to apply for hardship. They would need to establish a case that they gifted those assets without knowing the implications for the aged care asset test, and that as a result they are suffering hardship in relation to their ability to meet aged care costs.

Application of the assets changes

It is not accepted that these changes are retrospective. There is a distinction at law between legislation **having a prior effect on past events** and legislation **basing future action on past events**. The proposed changes fall into the second category, and would not be considered to have a retrospective operation. An example of a change that would fit into the first category, and would be considered to have a retrospective operation, would be if people who entered residential care between 10 May 2006 and 31 December 2006 were to lose their concessional resident status on commencement of the proposed amendments on 1 January 2007 because of a change in the way the assets test was applied to them.

The changes will apply to any gifts made by prospective residents from 10 May 2006, after the Budget announcement. This was announced in the Budget.

Community Views

The Senate Community Affairs Committee held an inquiry into this Bill. There were five submissions to this Inquiry, none of which raised the inclusion of gifts made from 10 May 2006 as an issue of concern. The National Seniors Agency appeared at the public hearing on 4 October 2006 and again this was not raised as an issue of concern. Their view was that the Bill 'will overwhelmingly elicit support' from their membership.

Publicity

The change has not yet been legislated, and therefore efforts to date in publicizing the change have been modest, but have included:

- Inclusion in Budget paper No 2
- A press release by the Minister on Budget night; and
- An article in the spring edition of *News for Seniors*. This publication is distributed by Centrelink to around 2.3 million pensioners. A further article is planned for the Summer edition.

A communication strategy has been developed to inform people of the new arrangements. This includes:

- Press advertising after the legislation is passed. Consumers, aged care facilities, financial advisers and industry peak bodies will be targeted during the campaign.

- An information brochure will be distributed to all existing residents and or their nominees and industry peak bodies.

- Publications produced by the Department of Health and Ageing on aged care and residential care fees and charges will be updated to include information on the new arrangements. These materials are also available on the Department's website at www.health.gov.au.

THE HONOURABLE CHRIS PEARCE MP

Parliamentary Secretary to the Treasurer
Federal Member for Aston

17 OCT 2006

RECEIVED

17 OCT 2006

Senate Standing C'ttee for the Scrutiny of Bills

Senator Robert Ray
Chair
Senate Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

Dear Senator Ray

I am writing in response to the query raised in the Senate Standing Committee for the Scrutiny of Bills Alert Digest No. 11 of 2006 (11 October 2006) relating to the Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Repeal Bill 2006. I am responding on behalf of the Treasurer as the Housing Loans Insurance Corporation and associated matters fall within my portfolio responsibility.

The Committee sought advice on whether time limits in relation to Schedules 1 and 2 of the Bill should be included. The Committee also asked whether the Bill might trespass unduly on personal rights and liberties.

A time limit was not included in either Schedule 1 or Schedule 2 as the eventual timing of any transfer and vesting of the Commonwealth's portfolio of pre-transfer contracts is not known. As I stated in the introductory speeches in the House of Representatives, the Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Repeal Bill 2006 together with the Housing Loans Insurance Corporation (Transfer of Pre-Transfer Contracts) Bill 2006 provide the framework to allow the vesting of the portfolio to occur but do not commit the Government to a transfer. Given the previous unsuccessful attempts to dispose of the Corporation, the Government considers it prudent not to anticipate how long it may take to achieve an eventual transfer of the portfolio. The Bills provide the Government with the flexibility to finalise administrative matters relating to the transfer without the need for further legislative amendment.

Additionally, it would not be in the Commonwealth's interests to set a timeframe for a repeal of the existing law prior to any vesting of the contracts in an acquirer, as this would extinguish the Commonwealth's legal responsibility for the contracts and render inoperative certain instruments that are currently in force. The Bills that I have introduced seek to enable the Commonwealth wholly to divest its interests in the pre-transfer contracts to an acquirer. On vesting of the contracts in an acquirer, all rights and obligations of the Commonwealth under the contracts will become rights and liabilities of the acquirer. All rights and obligations continue to be preserved and the acquirer becomes the successor in law to the contracts.

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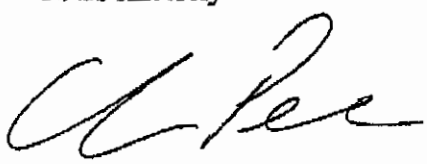
As noted in the Explanatory Memorandum, the current law preserves the effect of instruments that were in force immediately before the 1997 transfer day to which the Corporation was a party or which referred to the Corporation. The Australian Government Solicitor has advised that repealing the current law, without vesting ownership of the contracts to an acquirer, would have the undesired effect of referring to the Corporation which no longer exists. To avoid this, the Housing Loans Insurance Corporation (Transfer of Pre-Transfer Contracts) Bill 2006 will preserve the rights and liabilities under the pre-transfer contracts and the effect of instruments currently in force by providing that references to the Corporation will become references to the acquirer on the vesting day. The existing law should not be repealed without the transfer of the contracts also occurring. For this reason, these two Bills should be considered as a package.

During the drafting process, consideration was given to the potential impact that the vesting may have on properties rights associated with the remaining contracts. However as the contracts and policies are held by lenders, rather than individual borrowers, the transfer was not considered to affect personal rights or liberties.

I have provided a copy of this letter to the Treasurer.

Yours sincerely



CHRIS PEARCE

THE HON PETER DUTTON MP

MINISTER FOR REVENUE AND ASSISTANT TREASURER

17 OCT 2006

Senator Robert Ray
Chair
Senate Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

RECEIVED
17 OCT 2006
Senate Standing C'ttee
for the Scrutiny of Bills

Dear Senator Ray

I refer to the Scrutiny of Bills Alert Digest No. 7 of 2006 (9 August 2006) and the Committee's request for advice as to the reason for the retrospective commencement of items 3 to 5 of Schedule 3 to Tax Laws Amendment (2006 Measures No 4) Bill 2006.

Schedule 3 to the Bill amends the trans-Tasman imputation provisions. Under those provisions, Australian franking credits flow through to an Australian shareholder who holds shares in a New Zealand company. The provisions apply only if the New Zealand company elects to maintain an Australian franking account reflecting Australian tax paid.

A problem arises under the current law if a New Zealand company pays a franked dividend to an Australian company where that dividend is non-assessable non-exempt income of the Australian company. In these circumstances, a franking credit does not currently arise in the Australian company's franking account.

The amendments in Schedule 3 to the Bill 2006 correct this anomaly. That is, consistent with the original policy intent, the amendments ensure that franking credits arise in the franking account of the Australian company even though the dividend is non-assessable non-exempt income.

Items 3 to 5 of Schedule 3 (the foreign dividend account amendments) make consequential amendments to the former foreign dividend account rules. Under those rules, foreign dividends received by an Australian company that are non-assessable non-exempt income were generally credited to the company's foreign dividend account because no portion of the dividend could generate Australian franking credits.

The foreign dividend account amendments ensure that the company's foreign dividend account is debited when a credit arises in its franking account because of the amendments in Schedule 3. If the foreign dividend account rules were not modified, a double benefit would arise to the Australian company – that is, a credit would arise in both its franking account and its foreign dividend account.

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The amendments in Schedule 3, which apply from 1 April 2003 (the date that the trans-Tasman imputation regime commenced), generally commence on Royal Assent. However, the foreign dividend account amendments commence on 13 December 2005.

As the foreign dividend account provisions have been replaced by the conduit foreign income rules with effect from 14 December 2005, the foreign dividend account amendments need to commence before that date to be legally effective.

The practical effect of Schedule 3 is that if an Australian company received a franked dividend that is affected by the amendments between 1 April 2003 and Royal Assent, a franking credit will arise in the company's franking account on the day that the dividend was paid. However, that franking credit will be recognised only after Royal Assent – that is, once the new law commences. In addition, if the franked dividend was paid between 1 April 2003 and 14 December 2005 and a credit had previously arisen in the company's foreign dividend account, a debit will arise in the company's foreign dividend account at the same time that the credit arises in its franking account.

Finally, I confirm that the amendments in Schedule 3 were sought by, and are beneficial to, affected taxpayers.

I trust this information is of assistance.

Yours sincerely

PETER DUTTON