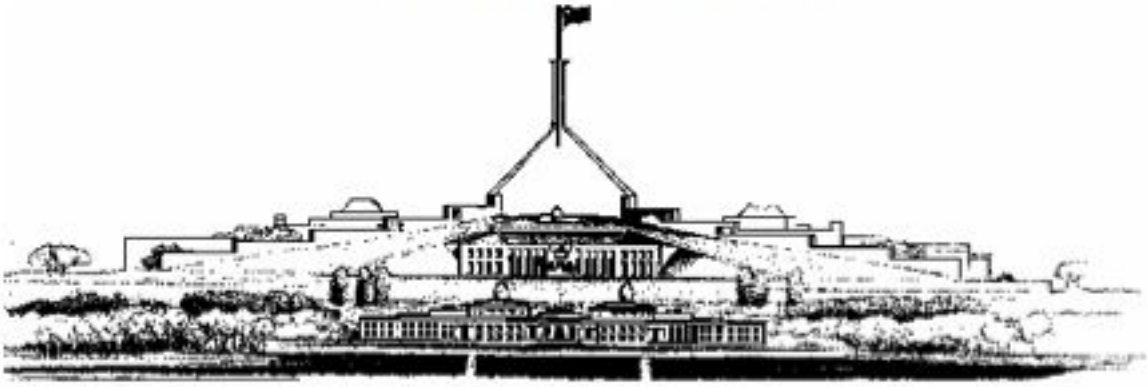
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

SUPERANNUATION LEGISLATION AMENDMENT BILL (No. 3) 1999

Second Reading

SPEECH

Monday, 20 September 1999

BY AUTHORITY OF THE SENATE

SPEECH

Date	Monday, 20 September 1999	**Source**	Senate
Page	8414	**Proof**	No
Questioner		**Responder**	
Speaker	Conroy, Sen Stephen	**Question No.**	

Senator CONROY (VIC) (5.50 pm)—The Superannuation Legislation Amendment Bill (No. 3) 1999 is intended to give effect to the government's 1998 budget changes to the regulation of small superannuation funds —do-it-yourself or excluded funds—and to a recommendation of the financial system inquiry, the Wallis inquiry. Primarily, it amends the Superannuation Industry (Supervision) Act 1993—SI(S) Act for short—and a range of other related financial services, taxation and superannuation acts to implement three main changes. First, it will establish a new category of small super fund with fewer than five members, to be called a self-managed fund, where all the members of the fund must have a business or family relationship—non arms-length—and must become trustees of the fund. Second, it will transfer the regulation of self-managed funds from the Australian Prudential Regulatory Authority to the Australian Taxation Office with effect from 1 July 1999. Finally, it will provide for a reduced supervisory levy, from $200 to a maximum of $50, to be payable by self-managed super funds.

The arguments that the government has proposed for the changes contained in this bill are some of the weakest that have been presented before this Senate. According to the 1998 budget papers, there is no revenue implications involved in this policy change, while the explanatory memorandum states that changes to the superannuation supervisory levy are expected to have a budget revenue cost of around $19 million in each of the financial years 1999-2000 to 2001-02. The Treasury stated in a briefing on this bill that they expect this revenue to be recouped through user charging principles applied by the ATO and APRA. So this is clearly not a savings measure. It is difficult to determine exactly why the government has proposed this bill, other than to create even more confusion in the superannuation industry, which must shudder at budget time and whenever the government mentions tax system changes or an inquiry into the financial services sector.

The government does seem to be trying to make a case that there are some members of excluded superannuation funds who are perhaps not able to best represent their interests in the fund. These members might be at arms length from the trustees of the scheme and are more than likely to be employee members of small employer sponsored funds. However, the government has offered absolutely no evidence in support of the proposal that arms-length members are being somehow misrepresented in their fund. Indeed, it is simply asserted that this is the case or may be the case in the future. So, based on no evidence and armed with nothing more than a theory, the government has presented this bill and expects the Senate to pass it in its current form. While this is the prerogative of every government—although perhaps not the prerogative of what is left of the Kennett government —it is the responsibility of the opposition and all senators in this place to ensure that laws which pass this Senate are sensible and do not impose unfair or unnecessary burdens on those who are affected by them. It is Labor's view that this legislation in its current form will impose a range of burdens on the trustees and administrators of excluded superannuation funds. It will also have an adverse impact on the same sex couples who operate an excluded superannuation fund, as well as members of funds who are not related to each other.

The Senate Economics Legislation Committee has examined this bill in detail and reported on 22 June 1999. Labor senators found that the bill in its current form would increase complexity and confusion by introducing the ATO as a third superannuation regulator, increase costs to excluded funds which may be forced to restructure as a result of the provisions in the bill, trigger a CGT liability and possibly a stamp duty liability for funds which have no other practical option but to transfer ineligible members out of the fund, discriminate against same sex couples who are currently legitimate members or trustees of excluded superannuation funds and contradict the key objective of increasing protection for arms-length fund members who are currently in excluded funds. With that in mind, Labor will be moving an amendment which is designed to ensure that the disruption and additional costs imposed on excluded superannuation funds are kept to a minimum while still ensuring that the government's bill remains largely intact.

It ought to be noted that the government's delay in introducing this bill has caused unnecessary uncertainty and cost, especially amongst small business owners. This measure, which was first announced on 12 May 1998, was not introduced into the parliament until 31 March 1999. An exposure draft was released but with only two weeks for comment. This sort of delay is simply not good enough. The government has been the master of

government by press release, and it has found itself in trouble as a result of it on more than one occasion. The Liberal government says that it represents small businesses, but all it is doing with this bill is unnecessarily introducing more red tape, more cost and more confusion. Think of the cost to small businesses which operate superannuation funds in dealing with the superannuation surcharge tax nightmare as well as the GST nightmare on main street. Small businesses must be wondering where it will all end. It is clear that the passage of this bill will cause increased complexity and confusion for members, trustees and administrators of do-it-yourself funds.

However, the opposition is willing to give qualified support to the public policy intention of this measure—that is, we are supportive of the case that some arms-length members of excluded superannuation funds may not best be able to represent their interests under the current framework. This is specifically the case with employees who may be members of employer sponsored do-it-yourself funds. The often unequal nature of the relationship between employees and employers means that some employees may not be able to best represent their interests in these types of DIY funds. This could still be the case even if the employees were to become trustees of the fund. We will be moving an amendment which will prevent employees being members of employer sponsored DIY funds but will allow non-employees to remain or become members of the fund provided they also become trustees.

The opposition considers that the increased cost and confusion resulting from the measures in this bill could be largely overcome by a government commitment to an effective education campaign following the passage of the bill. Funding for the education campaign could come from existing ATO resources or possibly from a small increase in the significantly reduced supervisory levy. Ensuring appropriate compliance with the law will be an integral part of appropriate supervision, and education is an important part of getting best practice levels of compliance. An example of this is the high rate of compliance with the superannuation guarantee legislation as a result of the highly successful education campaign conducted by the Labor government. Unfortunately, money earmarked by the Labor government in 1995 for a community superannuation education campaign was cut completely by the coalition government in the 1997 budget, to the detriment of the understanding of superannuation by the general community. That money was obviously not part of Mr Howard's core promises. The fact that Labor's superannuation guarantee education campaign has resulted in such a high compliance rate and a growing understanding of the importance of superannuation is a good lesson and one that a smart government would take note of.

This bill proposes three major changes. The first is a new definition of self-managed super fund and fund membership changes. DIY super funds are currently subject to less onerous prudential regulations than larger funds which come under the control of the SI(S) Act and regulations. This is based on the presumption that most DIY fund members are closely associated with the fund and its trustees and are likely to be able to represent their own interests as non arms-length members. Some 16 per cent or approximately 30,000 of the 180,000 DIY funds contain arms-length members who, the government claims, might not be able to protect their interests in the superannuation fund and who do not have the full prudential protection of the regulator. To overcome this potential problem, the bill requires all members of a self-managed fund to be family members or business relations, on the assumption that family members or business partners will be able to look after their own interests. In addition, all fund members will be required to become trustees. Under the bill, a member who does not fit into one of these categories will be transferred out of the fund. Alternatively, the fund may not wish to be a self-managed fund, in which case it might appoint an independent trustee and will be regulated by APRA. The fund also has the option of winding up.

The government has not provided any evidence in support of this change which will inconvenience many small superannuation funds, many of which are run by small businesses. The bill will also force fund trustees to expel some arms-length fund members, potentially incurring substantial costs to the fund, its members and the transferring member. There is no sound public policy purpose for requiring fund members to be related either by family or through business but not through an employer-employee relation. The government argues that related fund members are better able to represent their interests in the fund—an argument that statistically is unsustainable and inconsistent with divorce, bankruptcy and other white-collar crime statistics such as theft and fraud. Just because you are somebody's daughter, wife, sister, grandparent, uncle or business partner does not mean that you will not be ripped off by that person. The provision requiring fund members to be related creates problems for friends and/or same sex members of existing DIY funds and will potentially cause a capital gains tax liability. For example, a fund member who is not related will force the trustees to take one of two possible actions: first, roll the non-related person out of the fund into another fund which is likely to be APRA regulated; or, second, change the structure of the fund to an APRA regulated small fund which requires the appointment of an improved trustee.

Either one of the above options will result in increased costs for the fund, the possibility of a CGT liability—as assets may have to be liquidated to pay out an ineligible fund member's interest—and the exclusion of friends and/or same sex partners from their existing fund if they do not have a business relationship. This outcome is otherwise largely preventable by maintaining the provision that permits all self-managed fund members, except employees, to become trustees of the fund and allowing the option that fund members do not have to be related. By becoming a trustee of the fund, a former arms-length fund member should be better able to protect their own interests. The opposition's amendment will allow more flexibility for existing DIY fund members and trustees and will also allow some arms-length members currently in DIY super funds to continue with their current fund arrangements.

A problem also arises for some funds that may have difficulty in finding and appointing an approved trustee if they are required to restructure to become an APRA regulated small fund. APRA has a discretion to ensure that the fund is complying, and it is hoped that APRA will exercise its discretion in an appropriate and fair way.

A question has also arisen concerning the validity of not permitting employer sponsored funds with fewer than five members to access the equal representation provisions which are available to employer sponsored funds with more than four members. Fewer than five members funds with arms-length members which do not become self-managed funds must restructure and appoint an approved trustee. This issue appears inconsistent and may require further amendment, although the opposition will not be pursuing this at this stage.

Second, the proposed regulatory transfer to the ATO has been described by one commentator as `like putting Dracula in charge of the blood bank'. Small superannuation fund operators and their accountants and administrators are worried that the ATO may not only crack down on persons allegedly rorting the system but also take a stricter line with funds which appear to be operating within the law. While this is in line with a Wallis inquiry recommendation, it appears to be based on the fact that it is impractical for the APRA to do anything but superficially regulate these funds. APRA generally conducts field audits and would require large additional resources to have any hope of auditing the 180,000 DIY funds it currently regulates. There are only around 5,000 industry, retail, corporate and public sector funds.

APRA's incapacity to effectively regulate excluded funds presented governments with a twofold problem of ensuring DIY funds were complying—and, hence, eligible for concessional taxation treatment—and had an appropriate level of prudential regulation to protect arms-length members, often employees in small employer funds. Arguably, if APRA cannot effectively regulate DIY funds, this could lead to an abuse of investment rules and possible taxation avoidance. Transfer of the regulation to the ATO may curtail this if it is occurring.

Before the Wallis inquiry, superannuation funds were regulated only by the Insurance and Superannuation Commission. The transfer of prudential regulation for self-managed super funds to the ATO will result in superannuation being regulated by three different entities: APRA, ATO and ASIC, the Australian Securities and Investment Commission. This is in direct contrast to the main Wallis recommendation that essentially only two bodies, APRA and ASIC, should be responsible for the regulation of the financial services sector. However, Labor will not be opposing the transfer to the ATO, which should result in better compliance regulation. It is pleasing that the ATO seems to have adopted a positive approach to this role from the start. The opposition's proposed amendment permitting some fund members to become trustees should similarly ensure better protection of members' interests.

Third is the matter of the reduced supervisory levy to be payable by self-managed super funds. Until the formation of APRA on 1 July 1998, all superannuation funds paid $200, plus larger funds paid a percentage of their assets, to cover the costs of their regulation. APRA claims that the $200 paid by DIY funds cross-subsidised the prudential regulation of larger funds. Changes to the levy structure within APRA and the removal of the supposed cross-subsidy by capping the amount payable by DIY—

Senator Kemp interjecting—

Senator CONROY—I am trying to complete this debate as fast as I can, Senator Kemp, so I would happily avoid your interjections, if you can control yourself. I know Carlton have made the grand final, and it is an exciting thing for you, but can you just settle down over on that side.

Senator McGauran—Brilliant adlibbing!

Senator CONROY—Senator McGauran, I would stick to trying to find those pages that you lost before.

Senator Quirke—The National Party did okay on Saturday too, didn't they?

Senator CONROY—Thank you, Senator Quirke. I will take that interjection.

The ACTING DEPUTY PRESIDENT (Senator Bartlett)—Order! Senator Conroy, return to the matter at hand.

Senator CONROY—The Democrats had a brilliant showing there as well.

The ACTING DEPUTY PRESIDENT—Senator Conroy, perhaps you could return to the bill.

Senator CONROY—That means lower retirement incomes on the part of members of larger superannuation funds, who are more likely to be low and middle income earners.

Senator Quirke—Who had a lousy Saturday?

Senator CONROY—Kempy was okay. Kempy did not get to show and tell, so you could not tell who he voted for. Very few low and middle income earners would be in DIY funds, which are predominantly recommended to persons with more than $100,000 to invest, although some may be arms-length members. There has been no evidence produced to support the assumption that DIY fund levies were subsidising larger superannuation funds. However, larger funds have not rebutted this assumption nor opposed the lowering of the DIY fund levies. The government may also be counting on using the lowering of levies for self-managed funds as an offset to other changes, including changes to investment rules, which are the subject of the Superannuation Legislation Amendment Bill (No. 4) 1999 , to which Labor is currently opposed.

Labor will not be opposing the reduction in the supervisory levy. The opposition will be moving an amendment to this bill to make it fairer and to reduce the cost and complexity this bill forces onto small excluded superannuation funds. It is an amendment which is welcomed by small businesses and the businesses which currently administer excluded superannuation funds, which are often small businesses themselves.

The government's complete lack of evidence as to the necessity of these changes is alarming. There is no revenue involved in this measure. One would anticipate that, if the government were concerned about some sort of rorting, it would provide evidence of lost revenue. That has not been forthcoming. The government should not, however, expect to successfully use the same tactic to get its bill containing changes to the investment rules applying to superannuation funds through the Senate. That bill, which will be examined by a Senate committee, will require substantial evidence in support of it before it gets the support of the opposition.