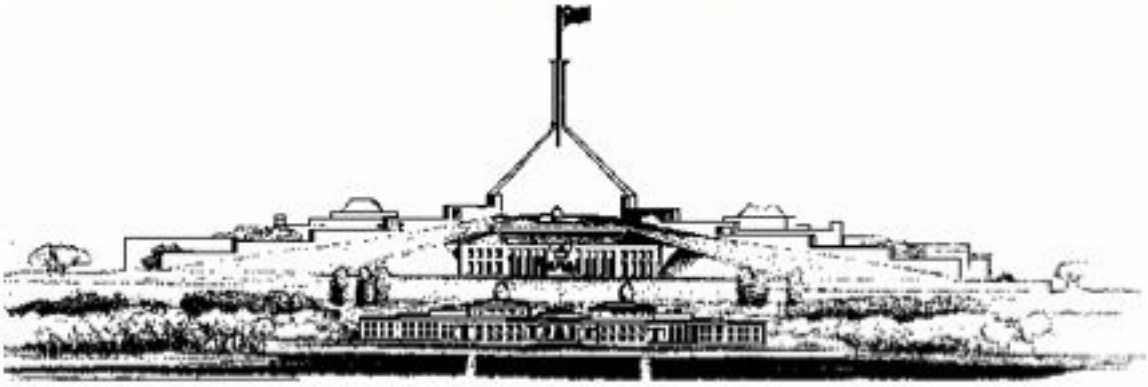
COMMONWEALTH OF AUSTRALIA

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	8419	**Proof**	No
Questioner		**Responder**	
Speaker	Allison, Sen Lyn	**Question No.**	

Senator ALLISON (VIC) (6.06 pm)—The Superannuation Legislation Amendment Bill (No. 3) 1999 sets out various changes to the prudential regulation of the superannuation industry between the Australian Prudential Regulations Authority, or APRA; the Australian Securities and Investment Commission, or ASIC; and the Australian Taxation Office. It broadly offers the recommendations of the Wallis inquiry into financial services. Most of the bill is non-controversial and, as these provisions have been adequately dealt with by the minister's second reading speech and in the report of the Senate Economics Legislation Committee, I do not propose to repeat them here.

One aspect of the bill that has become controversial is the proposal to deal with self-managed funds. Currently, funds with fewer than five members are excluded from most of the prudential supervision provisions of the SIS legislation. The Wallis inquiry endorsed this approach, recommending that the prudential regulation for self-managed funds be reduced to a minimal level of supervision. It also recommended that this be accentuated by moving the role of regulator from APRA to the ATO. However, the report was concerned to ensure that small funds that had members who were beneficiaries at arm's length should be subject to the full protection of prudential supervision. The report said:

At present, some excluded funds have beneficiaries who are at arm's length from the trustee. This is unsatisfactory to the extent that there is little protection of the interests of these third-party beneficiaries and because there is little scope for effective prudential resolution of such funds. The Inquiry considers that funds which have third-party beneficiaries should not be regarded as excluded funds. On balance, the Committee would prefer to discourage this particular configuration of superannuation schemes. The Committee believes that there is an opportunity to improve the prudence and compliance of excluded funds by requiring all beneficiaries of such funds to be trustees.

The Democrats broadly endorse this approach. However, we are concerned that the govern ment, in implementing this recommendation, has gone too far.

This bill seeks to deny the status of excluded funds to all but those funds where all members are either related or in business together. This approach would exclude a number of arrangements, such as the family accountant becoming a member of the relevant super fund, a same sex partner being a member, or a close friend or distant relative being a member. As such, many groups such as the Institute of Chartered Accountants, the Taxpayers Association and the Law Council were very critical of the proposed narrow relationship definition used to define `not at arm's length'.

The Democrats have long supported the principle that people capable of managing their own superannuation funds should be able to do so. In 1993, when the SIS bills were enacted, we were instrumental in ensuring that small funds were not as constrained as larger funds in terms of assets and supervision. However, we share the concern of the Wallis inquiry that these provisions lessening prudential supervision should not be used to the detriment of the interests of non armslength beneficiaries.

The key question for us in this bill is: whom are we trying to protect? Before we inflict a $6,000 to $7,000 cost impost on small funds by requiring independent trustees, we need to ask: whom are we trying to protect? The fundamental aspect of the occupational superannuation system is that it is about making sure that superannuation is invested in the interests of employees, and that employers do not have access to the funds of their employees just to prop up their own businesses. Similarly, the Democrats have always been concerned to ensure that trustees act in the interests of employees, and that the entire super scheme is structured to deliver maximum benefit to employees.

In terms of reducing the level of prudential supervision of small funds, we would answer the question by saying that it is the interests of employees that we are trying to protect. Thus, where employees are members of a super fund, it is reasonable to insist that independent trustees be appointed. In other cases where business

partners, family members or friends join together to manage their own superannuation, provided all members become trustees and have full access to all information about how their funds are invested, it is reasonable that the level of regulation should be minimised. Thus, in the committee stage the Democrats will be supporting amendments to delete the various definitions of relationship determined by the government and instead defining an excluded fund as one that does not include employees of a trustee. This mechanism will ensure that the interests of employees are adequately protected by independent trustees whilst giving self-managed funds more freedom to operate free from excessive regulation.