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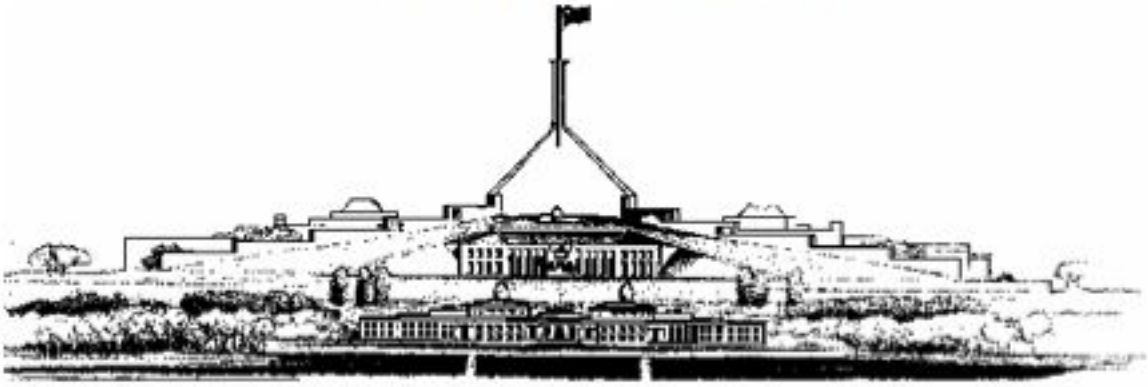

THE SENATE

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
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Questioner		**Responder**	
Speaker	Kemp, Sen Rod	**Question No.**	

Senator KEMP (VIC—Assistant Treasurer) (7.30 pm)—In my remarks, I will respond to some of the issues which were raised during the debate on the second reading, and we will undoubtedly deal with those which I do not respond to during the committee stage. The Superannuation Legislation Amendment Bill (No. 3) 1999 amends the Superannuation Industry (Supervision) Act 1999 to change the regulatory arrangements for excluded funds, sometimes referred to as do-it-yourself funds. The bill is designed to ensure that all members of a do-it-yourself fund are in a position to participate in the management of that fund. That is, for the first time, the bill will allow the members of these funds to actually do it themselves with only nominal regulatory interference.

The bill will replace the existing definition of an excluded superannuation fund with a new definition of a self-managed superannuation fund. In addition to requiring the fund to have fewer than five members, the new definition will require that all members of the fund be trustees of the fund or directors of the body corporate trustee.

As I mentioned in my second reading speech, the financial systems inquiry found that, under the present system, there is little protection of the interests of beneficiaries who are at arms-length from the trustees of an excluded fund. In addition, there is little practical scope for effective prudential regulation of such funds. As such, the inquiry concluded that excluded funds should not have beneficiaries who are at arms-length from the trustees.

Under the new definition, members of self-managed superannuation funds will be able to protect their own interests. Because of this, these funds will be subject to a less onerous prudential regime under the Superannuation Industry (Supervision) Act 1993, the SI(S) Act. The bill has been considered by the Senate Economics Legislation Committee, which recommended that the bill be passed.

Let me now turn to some of the issues which were raised during the debate on the second reading. In relation to the ATO as a regulator, the bill will also transfer the regulation of self-managed superannuation funds to the Australian Taxation Office. While regulation of all other funds will remain with the Australian Prudential Regulation Authority, the ATO will be responsible for ensuring that self-managed superannuation funds comply with the non-prudential requirements of superannuation law. Nevertheless, some have expressed concerns about the approach the ATO will take to its new responsibilities under the bill. The primary aim of the ATO as a regulator of self-managed superannuation funds will be to ensure that these funds are complying with the relevant provisions of the SI(S) Act.

The ATO has developed a compliance model on which its regulation of self-managed superannuation funds will be based. There are four stages to the model: education, communication and service, self-regulation, assisted regulation and enforced regulation. The ATO expects to spend most of its time and effort at the first two stages to assist self-managed superannuation funds to regulate through education and communication. This reflects the ATO's belief that the vast majority of self-managed funds wish to comply with the law or would comply if made fully aware of the rules.

Changes in the administrative arrangements have given the government an opportunity to address the supervisory fees levied on small superannuation funds. Proposed changes to the supervisory levy for self-managed superannuation funds are expected to lead to a reduction in revenue collected from such funds of around $19 million in each of the financial years 1999-2000 and 2001-02. I should also mention for completeness that the Australian Prudential Regulation Authority will continue its more extensive role as the prudential regulator of all other funds.

Concerns have been raised about the consequences for self-managed funds should one of the members reside overseas. It has been suggested that the fund would lose its Australian residency status under the superannuation legislation. All complying superannuation funds have to be a resident superannuation fund. This applies to all funds, not just self-managed funds. The requirements of being a resident superannuation fund are not being changed by this bill. One of the requirements of a resident superannuation fund is that the central management and control of the fund remain in Australia.

Under the bill, all members of a self-managed superannuation fund will need to be trustees of the fund or the sole directors of a body corporate that is a trustee of the fund. If issues arise about the location of the central control and management of a fund with member trustees overseas, consideration should be given to switching to an approved trustee. Any changes to the requirements of a resident superannuation fund would need to be considered in the broader context of determining the circumstances in which Australia's superannuation tax concessions should be available to non-residents.

Capital gains tax was an issue raised by Senator Sherry. It has been suggested that the bill will require some self-managed funds to pay capital gains tax in order to restructure to meet the requirements of the bill. The changes to the SI(S) Act made by the bill do not require funds to restructure in a manner that gives rise to a capital gains tax liability. All funds will have the option of retaining their current membership and appointing an approved trustee. Where a fund appoints an approved trustee or specific amendments are made to the trust deed to comply with the SI(S) Act, existing rollover provisions in the taxation legislation will apply.

There are a number of issues that Senator Sherry in particular raised, and I have looked in vain to see whether there are any amendments to be moved in relation to those issues that Senator Sherry raised. As there are no amendments being proposed by the Labor Party in this area—with one exception—one wonders why he bothers to pursue these matters. If the Labor Party truly believed in some of the things that Senator Sherry said—and I would understand that there would be qualifications from anyone in fully accepting some of Senator Sherry's diatribes—one would have expected some serious work to have been done, and that apparently was not the case.

There is an opposition amendment which removes the family business linkage requirement while ensuring that employees cannot be a member of their employer's self-managed superannuation fund, except where they are relatives. The government's preferred position is that which is introduced in the bill. Of course, we will have to see how the debate proceeds.

In conclusion, the fundamental aim of the government in introducing this bill is to ensure that the regulation of small superannuation funds reflects the needs of members of such funds as well as the government's retirement income goals. At this point, I would like to foreshadow that the government will be moving a minor amendment in the committee stage to change the commencement date of the bill from 1 July 1999 to royal assent. I thank senators for the debate on this bill. I commend the bill to the Senate. I notice that, in relation to the opposition's amendment, it does seem to have the numbers in this chamber, so we will see what precisely happens.

Senator Conroy—You want a division.

Senator KEMP—I understand, but I would just like to make sure we are all clear on exactly what is going to happen. My understanding from the Democrats is that they will be supporting the amendment which has been moved by the opposition.

Question resolved in the affirmative.

Bill read a second time.