



**THIRTY-EIGHTH PARLIAMENT**

**REPORT 76**

**STANDING COMMITTEE ON UNIFORM  
LEGISLATION AND STATUTES REVIEW**

**REPORT**

**UNCLAIMED MONEY (SUPERANNUATION AND  
RSA PROVIDERS) AMENDMENT AND EXPIRY  
BILL 2012**

Presented by Hon Adele Farina MLC (Chairman)

October 2012

## **STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW**

**Date first appointed:**

**17 August 2005**

**Terms of Reference:**

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

**“5. Uniform Legislation and Statutes Review Committee**

5.1 A *Uniform Legislation and Statutes Review Committee* is established.

5.2 The Committee consists of 4 Members.

5.3 The functions of the Committee are –

- (a) to consider and report on Bills referred under Standing Order 126;
- (b) on reference from the Council, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to Standing Order 126;
- (c) to examine the provisions of any treaty that the Commonwealth has entered into or presented to the Commonwealth Parliament, and determine whether the treaty may impact upon the sovereignty and law-making powers of the Parliament of Western Australia;
- (d) to review the form and content of the statute book; and
- (e) to consider and report on any matter referred by the Council.

5.4 In relation to function 5.3(a) and (b), the Committee is to confine any inquiry and report to an investigation as to whether a Bill, proposal or agreement may impact upon the sovereignty and law-making powers of the Parliament of Western Australia.”

**Members as at the time of this inquiry:**

Hon Adele Farina MLC (Chairman)

Hon Donna Faragher MLC (Deputy Chairman) did not participate due to leave being granted between 8 October 2012 and 22 October 2012.

Hon Nick Goiran MLC

Hon Robin Chapple MLC (from 20 September 2012)

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**REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES  
REVIEW**

**IN RELATION TO THE UNCLAIMED MONEY (SUPERANNUATION AND RSA PROVIDERS)  
AMENDMENT AND EXPIRY BILL 2012**

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**1 REFERRAL**

- 1.1 On 13 September 2012, the Unclaimed Money (Superannuation and RSA Providers) Amendment and Expiry Bill 2012 (**Bill**) was referred to the Standing Committee on Uniform Legislation and Statutes Review (**Committee**) for inquiry, pursuant to Standing Order 126(1).
- 1.2 In supporting documentation, the Treasurer said the Bill does not give effect to a new scheme or cause Western Australia to participate in a scheme for the first time. It “*merely adjusts the terms of an arrangement in which WA has participated since 2003*”.<sup>1</sup> Given this comment, the Committee considered whether the Bill should have been referred. However, the Clerk of the Legislative Council confirmed the Bill to be a Standing Order 126 bill because its provisions transfer the responsibility of unclaimed superannuation money to the Australian Taxation Office (**ATO**) and that this came about when all the States and Territories agreed to the initiative.<sup>2</sup>

**2 CONDUCT OF THE INQUIRY**

- 2.1 The inquiry was advertised in *The West Australian* on 22 September 2012. Details of the inquiry were also published on the Committee’s webpage. The Committee wrote to stakeholders inviting submissions and one was received. A list of stakeholders to whom the Committee wrote is attached at **Appendix 1**.
- 2.2 The Committee held a public hearing on 8 October 2012 with witnesses from the Department of Treasury and the Government Employees Superannuation Board (**GESB**). The *Transcript of Evidence* may be accessed through the Committee’s website at <http://www.parliament.wa.gov.au>.

**3 INTRODUCTION TO THE BILL**

- 3.1 This Bill contains seven clauses in three Parts. It amends two Acts:
- the *Unclaimed Money (Superannuation RSA Providers) Act 2003 (2003 Act)*;  
and

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<sup>1</sup> Attachment to a letter from the Treasurer, Hon Troy Buswell MLA, 21 September 2012, p1.

<sup>2</sup> Email advice from Mr Malcolm Peacock, Clerk of the Legislative Council, 21 September 2012.

- the *State Superannuation Act 2000*.
- 3.2 Usefully, section 3 of the 2003 Act provides an overview of current arrangements between Western Australia and the Commonwealth with respect to unclaimed superannuation money.
- 3.3 Section 3(1) states that the Commonwealth's *Superannuation (Unclaimed Money and Lost Members) Act 1999* requires superannuation providers to give the Commissioner of Taxation information about unclaimed money and to make payments of unclaimed money to the Commissioner. However, section 3(2) allows superannuation providers to give that information and pay that money to an “*authority of the State instead*” - if a law of the State imposes on superannuation providers certain obligations about providing that information and paying that money. The 2003 Act imposed those obligations in the absence of an intergovernmental agreement.<sup>3</sup>
- 3.4 The Bill amends, then expires this corpus of law.
- 3.5 The Commonwealth will prescribe, in regulations made under its *Superannuation (Unclaimed Money and Lost Members) Act 1999 (Cth)*, three GESB administered exempt public sector superannuation scheme products. These are West State Super: GESB Super and GESB Super (Retirement Access) thereby enabling those schemes to participate in the Commonwealth's arrangements.<sup>4</sup>

#### **4 BACKGROUND TO THE BILL**

##### **The National Scheme**

- 4.1 The Explanatory Memorandum refers to an “*Agreement between the Commonwealth and the States and Territories to centralise unclaimed superannuation within the ATO*”.<sup>5</sup> However, the Treasurer explained that there is no formal Intergovernmental Agreement, Memorandum of Understanding or Ministerial Council Minutes underpinning the scheme.<sup>6</sup> The original legislative proposal was instead, a policy initiative developed by the *National Policy Officers Group*, a group of inter-

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<sup>3</sup> Answer to *Question on Notice* Number 5 from a Hearing on 8 October 2012.

<sup>4</sup> The Department of Treasury advised that exempt public sector superannuation schemes are public sector superannuation schemes that are exempt from regulation under the Commonwealth's *Superannuation Industry (Supervision) Act 1993* in recognition that they are already subject to State regulation under their enabling legislation. To be an exempt public sector superannuation scheme, a scheme must be listed in Schedule 1AA of the *Superannuation Industry (Supervision) Regulations 1994 (Cth)*.

<sup>5</sup> The Explanatory Memorandum, p1.

<sup>6</sup> Attachment to a letter from the Treasurer, Hon Troy Buswell MLA, 21 September 2012, p1.

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jurisdictional senior Department of Treasury officers, who advise their respective Ministers.<sup>7</sup>

## 5 PURPOSE OF THE BILL

5.1 In the following paragraphs, the Committee explains the nature of the legislative scheme and how it will operate in practice. This approach may enable the Legislative Council to understand the rationale for abrogating sovereignty and law making power over unclaimed superannuation money and to assess on balance, the merits of that abrogation.

5.2 The purpose of the Bill is to reverse the 2003 Act's current arrangements described in paragraphs 3.2 and 3.3 above. The amendments make possible the transfer of the "*stock, and ongoing responsibility, of lost and unclaimed superannuation money held by Western Australian public authorities and public sector superannuation schemes to the Australian Taxation Office*".<sup>8</sup>

5.3 The criteria for the proposed twice a year transfer of unclaimed GESB money to the ATO is as follows:

- Aged 65 or older and GESB cannot contact the member.<sup>9</sup>
- A non-contactable non-member spouse of a GESB fund member.
- A deceased member and GESB cannot contact the Estate.
- A former temporary resident.
- A lost member account of less than \$200 as at unclaimed money day (either 31 December or 30 June in a relevant year).<sup>10</sup>

5.4 Western Australia will be the third jurisdiction to transfer unclaimed superannuation money holdings since the Commonwealth made amendments to its *(Superannuation (Unclaimed Money and Lost Members) Act (Cth) 1999* in 2010. Those amendments

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<sup>7</sup> Hon Troy Buswell MLA, Treasurer, provided three exchanges of correspondence between September 2009 (when Hon Chris Bowen first wrote seeking agreement) and August 2011 (when the former Treasurer advised of Cabinet's decision to approve drafting amendments to support the transfer) evidencing the *National Policy Officers Group*.

<sup>8</sup> The Explanatory Memorandum, p1.

<sup>9</sup> The criterion is two pieces of mail returned to GESB as 'undeliverable'.

<sup>10</sup> Tabled Paper #1, p4, tabled by Mr Frank Meschino, Assistant Director, Superannuation Management, Department of Treasury, at a Hearing with Treasury and GESB witnesses on 8 October 2012.

facilitated the transfers of unclaimed money from State and Territory authorities as well as public sector superannuation schemes.<sup>11</sup>

5.5 The Explanatory Memorandum for the proposed transfer reveals two sources of unclaimed superannuation money.

- The first is held in the Consolidated Account, having been transferred there up to July 2007 from fewer than 20 private registered superannuation funds. Both the Explanatory Memorandum and evidence from witnesses at a hearing refer to an amount of \$200,000 across 248 claimant individuals.<sup>12</sup>
- The second is held by GESB for three of its product schemes.<sup>13</sup> An amount of \$4.825 million from 30,092 accounts will be subject to transfer.<sup>14</sup> That amount was current as at June 2012 and is extracted from GESB's live quarterly production data. However, it is subject to change.<sup>15</sup>

5.6 The total proposed to be transmitted to the ATO is therefore estimated at \$5.025 million.<sup>16</sup> Once there, the money will be paid into Commonwealth Consolidated Revenue and held there indefinitely.<sup>17</sup> No interest is accrued while entitlements are held by the Commonwealth.<sup>18</sup>

5.7 It has been claimed that centralising the administration of unclaimed money in the ATO will enhance the ability of fund members to be reunited with their money through its:

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<sup>11</sup> The Commissioner of Taxation's *Annual Report 2010-11*, p91 states that Victoria and the Northern Territory transferred in the 2010-11 reporting period.

<sup>12</sup> Tabled Paper #1, p4, tabled by Mr Frank Meschino, Assistant Director, Superannuation Management, Department of Treasury, at a Hearing with Treasury and GESB witnesses on 8 October 2012 reveals that once in the Consolidated Account, members do not receive any earnings. Neither fees nor charges are levied against the accounts.

<sup>13</sup> West State Super, GESB Super and GESB Super (Retirement Access).

<sup>14</sup> Tabled Paper #1, p2, tabled by Mr Frank Meschino, Assistant Director, Superannuation Management, Department of Treasury, at a Hearing with Treasury and GESB witnesses on 8 October 2012. Also Mr Nicholas Wells, Risk Manager, GESB, *Transcript of Hearing*, 8 October 2012, p4.

<sup>15</sup> Mr Nicholas Wells, Risk Manager, GESB, *Transcript of Hearing*, 8 October 2012, p5. Mr Boris Rodin, Senior Policy Analyst, GESB, described this amount as a "snapshot". He said: "this is a GESB changing number, because people will come onto that register and people will drop off as we engage with members or members will consolidate normally through the system to their current accounts."

<sup>16</sup> Tabled Paper #1, p4, tabled by Mr Frank Meschino, Assistant Director, Superannuation Management, Department of Treasury, at a Hearing with Treasury and GESB witnesses on 8 October 2012.

<sup>17</sup> Answer to *Question on Notice* Number 1 from a Hearing on 8 October 2012.

<sup>18</sup> Commissioner of Taxation, *Annual Report 2009-10*, p95. However, interest is paid for former temporary residents claiming their balances after they become Australian citizens (p103).



- “*extensive data matching and personal capabilities;*”<sup>19</sup> and
- “*efficiencies and synergies in centralising all unclaimed superannuation*”.<sup>20</sup>

5.8 The Committee queried the statistical evidence for these two claims given that the Bill is predicated on money being successfully matched and repatriated. The Department of Treasury quoted two statistics for the repatriation of unclaimed money.

- Firstly, that up to July 2007, \$1,000,000 of private registered superannuation funds’ unclaimed money was held in the Consolidated Account from which \$800,000 had been successfully repatriated.<sup>21</sup>

(The Committee is of the view that this represents an impressive 80% success rate over five years on the part of the Department of Treasury.)

- Secondly, for the period from 2003 to July 2012 a 40% success rate based on the number of claims.<sup>22</sup>

5.9 Of these statistics the Department of Treasury stated the bulk of the unclaimed superannuation money successfully reunited “*happened earlier and typically were the larger value accounts (average \$5,000)*”<sup>23</sup> by members of the general public who were more aware of their superannuation and motivated to reclaim it. However,

*the unclaimed super accounts remaining at Treasury now are relatively low value accounts (average \$840) and are proving far more difficult to reunite with their claimants. The small accounts are also less attractive to private investigators as the commissions are small. Therefore the success rate in reuniting the public with their unclaimed super for the balance currently held by Treasury is likely to be significantly lower than the 40% achieved between 2003 and July 2012.*<sup>24</sup>

5.10 The Committee is unable to assess whether the ATO will be better placed to match and repatriate the remaining \$200,000 in the Consolidated Account. The Commissioner of Taxation’s *Annual Report 2010-11* shows the ATO as at 30 June

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<sup>19</sup> The Second Reading Speech, p1.

<sup>20</sup> Hon Chris Bowen in a letter dated 3 September 2008 to Hon Troy Buswell MLA, Treasurer.

<sup>21</sup> Discussion between Hon Nick Goiran MLC and Mr Boris Rodin, *Transcript of Hearing*, 8 October 2012, p9.

<sup>22</sup> Answer to *Question on Notice* Number 3 from a Hearing on 8 October 2012.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

2011 holding \$730 million of unclaimed money but ATO's data cannot reveal "specific data from Western Australian employers."<sup>25</sup> Neither does the ATO report statistically on a State by State basis. It has not specifically tracked the amounts received from private superannuation providers since 2007 and later repatriated to their members.<sup>26</sup> However, the ATO said it can provide indicative data from a recent strategy applied to the total pool of unclaimed superannuation to reduce the number of less than \$200 accounts. The ATO said that between 2 June and 29 September 2012 it made 12,352 payments to Western Australian account holders. This represents 11% out of the total number of payments (112,699) issued to all States and Territories.<sup>27</sup>

- 5.11 The Department of Treasury approached the ATO for the latest statistical information but it could release only limited data extracted from its *Annual Report 2011-12*.<sup>28</sup> The ATO advised that during the 2011-12 financial year there were 1.37 million *SuperSeeker* searches undertaken, of which 709,475 successfully identified \$2.6 billion in lost and/or unclaimed superannuation accounts.<sup>29</sup> This represents a 51.8% success rate.
- 5.12 The ATO explained that the primary data set to facilitate matching of member information by automated processes is the tax file number, first name or initial, surname, date of birth and address. However some accounts are referred to the ATO with such poor quality or limited data that matching fails. The ATO estimates 7% of such accounts fall into this category but when manual matching takes place, an approximate 94% matching is achieved.<sup>30</sup>
- 5.13 GESB indicated that it has had some success in reuniting lost and unclaimed super with its members as part of various marketing and State reform campaigns around inactive accounts more generally. However, due to privacy issues GESB is unable to advertise unclaimed or lost member account details publicly.<sup>31</sup>
- 5.14 Given the absence of statistical data on a State by State basis, it is not possible for the Committee to extrapolate with certainty that the ATO will be successful in matching

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<sup>25</sup> Tabled Paper #1, tabled by Mr Frank Meschino, Assistant Director, Superannuation Management, Department of Treasury, at a Hearing with Treasury and GESB witnesses on 8 October 2012, p2.

<sup>26</sup> Letter from Mrs Beth Barry, Assistant Commissioner Superannuation, ATO, 18 October 2012, p2.

<sup>27</sup> Ibid.

<sup>28</sup> The Report has not yet been tabled in Federal Parliament and therefore is not yet a publicly available document.

<sup>29</sup> Answer to *Question on Notice* Number 2 from a Hearing on 8 October 2012.

<sup>30</sup> Letter from Mrs Beth Barry, Assistant Commissioner Superannuation, ATO, 18 October 2012, pp1-2.

<sup>31</sup> Answer to *Question on Notice* Number 3 from a Hearing on 8 October 2012.

and repatriating GESB's \$4.825 million in unclaimed money. However, given the above statistics, it is highly possible matching will occur.

- 5.15 The Committee noted that no Western Australian agency or body, including the *National Policy Officers Group*, has undertaken a detailed analysis of the effectiveness of the Commonwealth regime. Mr Frank Meschino, Assistant Director, Superannuation Management, Department of Treasury, said:

*There is a general understanding that it is actually a better way of administering it. So, it must be providing better results than each jurisdiction doing something separately, because effectively the Commonwealth is doing the same thing, except of course they have got use of the tax file numbers. They also have data matches across social security and other aspects under Commonwealth administration. Our expectation is that it has been more effective than the States on their own.*

*The Commonwealth does provide some success factors in their annual reports, and our understanding is that the next one is going to be even more comprehensive, which sort of is understandable because they have recently introduced born issues around the tax file numbers as well as around the Super-Seeker.<sup>32</sup>*

- 5.16 The Committee is of the view that “*general understandings*”; that the ATO “*must be providing better results*” and “*expectations*” of the Commonwealth regime are not satisfactory. The lack of empirical, jurisdictional specific evidence is disappointing.
- 5.17 The Committee makes the following two Findings.

**Finding 1: The Committee finds that the Department of Treasury was statistically successful in matching and repatriating unclaimed superannuation money of private registered superannuation funds up to July 2007.**

**Finding 2: The Committee finds an absence of jurisdictional specific empirical data to support the claim that the Australian Taxation Office can match and repatriate the estimated \$4.825 million of GESB's unclaimed superannuation money proposed to be transferred. However, it is highly possible matching will occur and the unclaimed money repatriated.**

<sup>32</sup> Mr Frank Meschino, Assistant Director, Superannuation Management, Department of Treasury, *Transcript of Hearing*, 8 October 2012, p8.

## **6 CLAUSES OF THE BILL WHICH MAY IMPACT ON THE PARLIAMENT'S SOVEREIGNTY AND LAW-MAKING POWERS**

### **Scrutiny of Uniform Legislation generally**

6.1 A former Standing Committee on Legislation pointed out that in scrutinising uniform legislation it is:

*important to take into account the role of the Western Australian Parliament in determining the appropriate balance between the advantages to the State in enacting uniform laws, and the degree to which Parliament, as legislature, loses its autonomy through the mechanisms used to achieve uniform laws.*<sup>33</sup>

6.2 The Department of Treasury provided the following State advantages of transferring money to the Commonwealth. The scheme:

- complies with the intent of the Commonwealth's broader legislation for the handling of unclaimed superannuation money;
- is consistent with the States obligations under the *Heads of Government Agreement*<sup>34</sup> which is to comply with the Commonwealth's retirement incomes policy as far as practicable;
- prevents further erosion of account balances for benefits for members the member may not be aware they have; and
- reduces any potential cross subsidisation by other members of GESB schemes.

6.3 The Department of Treasury provided the following State disadvantages:

- the loss of insured benefits for 52 GESB members' accounts who are "*probably not aware*"<sup>35</sup> they have life policies or salary continuance insurance; and

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<sup>33</sup> Western Australia, Legislative Council, Standing Committee on Legislation, *Special Report of the Standing Committee on Legislation in relation to Intergovernmental Agreements, Uniform Schemes and Uniform Laws: amendment to Standing Orders 230(c) and (d)*, 6 November 2001, p2.

<sup>34</sup> The Western Australian Government is a signatory to a "*Heads of Government Agreement: Exemption of Certain Public Sector Superannuation Schemes from the Superannuation Industry (Supervision) Act 1993*" between the Commonwealth and the State and Territory Governments. The States and Territories agreed (for their exempt public sector superannuation schemes) to comply with the principles of the Commonwealth's Retirement Income Policy in exchange for concessional tax treatments.

- if a former West State scheme member re-joins the Western Australian public sector, the person would be ineligible to reopen a West State Account.

### Specific Clauses

#### Clause 2(b)

- 6.4 Clause 2 deals with the commencement of the enactment proposed by the Bill with clause 2(b) providing that the substantive provisions will commence on a day fixed by proclamation.
- 6.5 The Committee has previously considered the impact of similar commencement mechanisms on the Parliament's sovereignty and law making power because at one extreme, commencement may never be proclaimed.

*The proclamation method of commencement involves a Minister exercising the ultimate discretion, that is, whether or not to prepare a proclamation for consideration by the Executive.*

*The proclamation method means the Parliament gives the Executive discretion to indefinitely suspend the operation of laws passed by the Parliament. The Committee noted that where unfettered control is given to the Executive to decide the commencement of a particular Act, this can usurp the power that lies at the heart of the role of the Western Australian Parliament.<sup>36</sup>*

- 6.6 The Committee noted that if a bill lacks a specific commencement date, it comes into operation on the 28<sup>th</sup> day after receiving the Royal Assent.<sup>37</sup> The Department of Treasury said that in practice, this is not a convenient arrangement and that “it is comparatively unusual to provide for a fixed commencement date unless there is a compelling reason why an Act must commence on that date and no other.”<sup>38</sup> In the

<sup>35</sup> Mr Nicholas Wells, Risk Manager, GESB, *Transcript of Hearing*, 8 October 2012, p10. During the Hearing the Committee was told there were 76 members but in a later *Answer to a Question on Notice*, GESB said: “The analysis that arrived at the 76 members with an account balance under \$200 who had insurance was undertaken in GESB’s test environment based on live system data. Due to demand on system resources and the need for other system testing this data has since been lost. As a result, GESB is unable to arrive back at the original 76 members. However, GESB has repeated the data analysis based on their current system utilising member balances as at 31 December 2011 to identify members with an account balance less than less than \$200. This has returned 52 members.”

<sup>36</sup> Western Australian Parliament, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 35, *National Gas Access (WA) Bill 2008*, 10 March 2009, p22.

<sup>37</sup> Section 20(2) of the *Interpretation Act 1984*.

<sup>38</sup> Tabled Paper #1, tabled by Mr Frank Meschino, Assistant Director, Superannuation Management, Department of Treasury, at a Hearing with Treasury and GESB witnesses on 8 October 2012, p6.

case of the Bill, the Department of Treasury require a more flexible approach to commencement because work “*will or may be*”<sup>39</sup> required to:

- identify and calculate the amount to be paid to the Commissioner of Taxation under clause 5. Clause 5 inserts a proposed new section 28, the provision which expires the enactment once all tasks have been completed; and
- make the regulations envisaged by clause 7. Clause 7 provides for two new subject matters for regulations:
  - (a) the insertion of a new section 38(4)(d) within the *State Superannuation Act 2000* to overcome the fetter in section 38(3) that regulations cannot be made if they reduce the amount of a benefit. This will be achieved by stating that section 38(3) does not apply if this would reduce the benefit as a consequence of paying the Commissioner an amount of unclaimed money.
  - (b) the insertion of a new section 38(5) so that regulations can be made to allow the GESB Board to give any statement, make any payment and do any other thing contemplated by the Act for the purposes of the Commonwealth’s *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

6.7 The Department of Treasury said GESB will also need to devise and put in place administrative and systems arrangements to ensure compliance with those regulations, once drafted.<sup>40</sup>

6.8 The Committee noted that generally, the absence of a fixed commencement date has the capacity to diminish the sovereignty of the Parliament but in the case of this Bill, it is satisfied that there are cogent reasons why clause 2(b) is drafted without a fixed commencement date.

*Clause 5 proposing to insert a new section 27 into the 2003 Act*

6.9 Proposed new section 27 prohibits the Treasurer from making any further payments of unclaimed money to 52 GESB account holders currently available under section 13(1)

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<sup>39</sup> Tabled Paper #1, tabled by Mr Frank Meschino, Assistant Director, Superannuation Management, Department of Treasury, at a Hearing with Treasury and GESB witnesses on 8 October 2012, p7.

<sup>40</sup> Ibid.

or (2) of the 2003 Act.<sup>41</sup> The Committee is concerned at the impact of proposed new section 27 on the insured benefits of the 52 GESB account holders disadvantaged by the legislative proposal.

- 6.10 From a parliamentary sovereignty perspective, the State of Western Australia is denied the opportunity to retain those useful insured benefits for the GESB account holders. The benefits were an election by those account holders during their contracts of employment within the public sector and when expunged, the intention to insure these public sector employees will be thwarted.
- 6.11 GESB describes these members as ‘lost’ with an account balance of less than \$200.<sup>42</sup> Although the account balances range from 16 cents to \$193.79, the insured benefits for death or ‘death and total and permanent disablement’ are significant - between \$180,000 and \$200,000. The number of months that the account balances would support the premiums is between zero and 75 months.<sup>43</sup>
- 6.12 Demographically, 75% are female and 25% male; whilst 63% are less than 30 years of age. The areas within which they reside are as follows.

Region	Number
Gascoyne	2
Goldfields/Esperance	2
Great Southern	1
Kimberley	11
Metro	23
Mid West	1
Outside WA	2
Pilbara	3
South West	5
Wheat belt	2

<sup>41</sup> Section 13(1) states: (1) “*The Treasurer must pay unclaimed money to a person if — (a) unclaimed money has been paid to the Treasurer under section 7 by a superannuation provider; and (b) the Treasurer is satisfied, on application made in the approved form by the person, that the superannuation provider would have paid the unclaimed money to the person had the money not been paid to the Treasurer.*” Section 13(2) states: “*If a superannuation provider satisfies the Treasurer that an amount paid to the Treasurer under section 7 exceeds the amount that would have been paid to the person concerned, the Treasurer must refund to the superannuation provider the amount of the excess.*”

<sup>42</sup> Answer to *Question on Notice* Number 9 from a Hearing on 8 October 2012.

<sup>43</sup> Answer to *Question on Notice* Number 6 from a Hearing on 8 October 2012. The figure of 52 member balances is at 31 December 2011 and the account balances of the 52 is less than \$200.

- 6.13 The Committee noted that transferring the money of these 52 to the ATO is purely for administrative purposes on the chance the account holder will be matched and their money repatriated. The downside is the insured benefits component of their account ceases on transfer because “*they would have no more money in their account to pay the premiums.*”<sup>44</sup> However, the 52 would lose their insured benefits in any event - “*either as part of the consolidation process or in the near future once their funds have been reduced to zero.*”<sup>45</sup>
- 6.14 It is evident that the current number of account holders is a moving feast as the deducted premiums erode the insured benefits and other members come onto the list at the next ‘unclaimed money day’ (31 December 2012).
- 6.15 The Committee queried whether it is possible for Western Australia to opt into the scheme but exclude those 52 accounts holders for the purpose of protecting their insured benefits should they be identified at a later time. The Department of Treasury said:

*An ‘opt-out’ ... may be possible, if the Commonwealth is willing to co-operate. The position is as follows:*

**Distinct Commonwealth arrangements**

*The Commonwealth Act<sup>46</sup> provides for similar but separate arrangements for:*

- (a) ‘lost member accounts’;*
- (b) ‘unclaimed money’, i.e. benefits which are due and payable to a member who has attained age 65, but who cannot be traced or contacted; and*
- (c) the entitlements of former temporary residents of Australia who have left the country.*

*All ... GESB members quoted fall into the first category of ‘lost members’ and recorded as having account balances of less than \$200, which would be subject to transfer to the ATO under the changes in the Bill.*

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<sup>44</sup> Mr Nicholas Wells, Risk Manager, GESB, *Transcript of Hearing*, 8 October 2012, p10.

<sup>45</sup> Ibid.

<sup>46</sup> Defined in this quotation as the *Superannuation (Unclaimed Money and Lost Members) Act 1999 (Cth)*.



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**Lost member accounts**

*Section 24C of the Commonwealth Act requires a superannuation provider periodically to give the Commissioner of Taxation ‘a statement, in the approved form, of information relevant to ... each lost member account’. ‘Lost member account’ is defined in the Commonwealth Act, and there is no scope for either State law or fund rules to substitute a different definition, so that only some of what would be regarded as lost member accounts under the Commonwealth Act actually get reported.*

*Section 24HA provides that, in respect of prescribed public sector schemes, the reporting obligation in section 24C applies in a modified form. The modified section 24C permits, rather than requiring, public sector schemes to give the statement of lost member accounts, and even then it does not permit the scheme to do so ‘if the governing rules of the scheme prohibit the trustee from giving the statement to the Commissioner’.*

*In short, the Commonwealth Act allows a prescribed public sector superannuation scheme to give a statement of lost member accounts, in the approved form, or not to do so. In the case of potentially excluding the .. GESB members for reporting purposes, for example, it would appear that the Commonwealth arrangements would accommodate the provision of a partial statement (which necessarily would not be in the approved form) including some, but not all, lost member accounts.*

*When it comes to making payments to the Commissioner, however, the position is slightly different. Section 24E of the Commonwealth Act requires a superannuation provider to pay the Commissioner, in respect of each person for whom it holds a lost member account, the amount that would be payable if the lost member were to request a rollover or transfer of his account.*

*Again, section 24HA modifies this as regards prescribed public sector superannuation schemes so that the superannuation provider is permitted, rather than required, to make the payment, and even then the modified section does not permit the payment ‘to the extent that the governing rules of the scheme prohibit a trustee from paying the amount to the Commissioner’.*

*On the basis of the above, it would appear that if the rules of the relevant GESB scheme provided that no payment was to be made in respect of a particular class of lost member accounts, then the Commonwealth legislation would not require or permit any payment in respect of those accounts.*

*Thus there is at least the technical possibility of Western Australian public sector schemes participating on the basis that ... their rules do not allow them to pay over lost member accounts from which insured benefit premiums are currently being debited, but do allow the payment of other lost member accounts.*

### **Unclaimed money arrangement**

*The position is broadly similar as regards participation in the Commonwealth 'lost member account' arrangements described above, referring to the requirement that account balances of less than \$200 in this category are to be transferred to the ATO. 'Unclaimed money' for the purposes of this section refers to benefits which are due and payable to a member who has attained age 65 but who cannot be traced or contacted.*

*The relevant provisions of the Commonwealth Act in regard to 'unclaimed money' sections 16, 17 and 18AA - do not allow participating public sector schemes to redefine 'unclaimed money' or to report less than the full amount of unclaimed money that they hold, but they could allow them not to pay over the full amount of unclaimed money 'to the extent that the governing rules of the scheme prohibit the trustee from paying the amount to the Commissioner'.*

*So, if it is relevant, it may be possible to provide that Western Australian public sector schemes will not pay over unclaimed money of members whose accounts insurance premiums are being debited.*

*However, as the entitlement to insured death benefits (and the debiting of the corresponding insurance premiums) ceases at age 65, any similar consideration of insurance issues attributable to the ... GESB members pertaining to the category of 'lost member accounts' of less than \$200 is not required.*

*That is, there would be need for consideration of an 'opt-out' arrangement for insurance purposes in relation to the provisions of the Bill requiring transfer to the ATO of GESB accounts meeting the definition of 'unclaimed money'.*

6.16 In attempting to protect the insured benefits of the 52 member accounts, the Department of Treasury said:

*None of the 'opt out' arrangements considered above would be possible unless the Commonwealth is willing to accept participation on this basis.*

*Although the Commonwealth legislation appears to make it possible, it is undoubtedly anomalous that a participating scheme would be reporting all its lost member accounts/unclaimed money, but only paying some of it over. This suggests that the legislation may not have been intended to operate in this way, and there may be a reluctance to operate it in this way.*

*In this regard, it could be described that the Commonwealth intends that Western Australian public sector superannuation schemes participate in lost member/unclaimed superannuation transfer arrangements on a full basis, rather than some partial basis where, say, the account balances of members with insurance cover at the relevant transfer date are excluded from the transfer of monies to the ATO.*

#### **State Implications**

*The implications for the State in regard to opting-out for the ... members with insurance arrangements relate to administration and best interests of the unclaimed/lost super recipients.*

*The partial arrangements are likely to increase the administrative burden for GESB as the organisation will need to separately manage these accounts up to the point where the account balances are reduced to nil from insurance fees. In addition, as the bulk of these accounts attract member protection from administration fees, the cost of this member protection is met through a subsidy funded by the wider GESB membership.*

*While the intent of the partial opt-in is to protect the insurance arrangements of unclaimed and lost superannuation recipients, the account balances will continue to erode from insurance fees which, unless the recipient is reunited with the unclaimed/lost super, will result in no insurance as well as no money left to be claimed.*

6.17 The Committee noted that although the Department of Treasury has articulated a method of circumventing the loss of GESB account holders' insured benefits, it is dependent on the:

- Commonwealth being willing to co-operate and participate on that basis (which is unknown at this time and arguably, doubtful); and
- GESB trustees making rules to prohibit the trustees from giving a statement of information relevant to each lost member account (but this may be administratively burdensome).

6.18 The Committee is of the view that the absence of a bilateral intergovernmental agreement underpinning the 2003 Act to be a weakness of the scheme. Had there been an agreement, GESB account holders' insured benefits may have been identified as an issue and dealt with there.

6.19 The Committee makes the following Finding.

**Finding 3: The Committee finds that the Unclaimed Money (Superannuation and RSA Providers) Amendment and Expiry Bill 2012 has a deleterious impact on the Parliament's law making power by prohibiting the protection of affected GESB account holders' insured benefits.**

6.20 The Committee makes the following Recommendation.

**Recommendation 1: The Committee recommends that the Minister representing the Treasurer confirm that the *Superannuation (Unclaimed Money and Lost Members) Act 1999 (Cth)* authorises a participating scheme to report all its lost member accounts and/ or unclaimed money, but only pay some of it over and that if this is the case, GESB's account holders' insured benefits could be preserved.**

*Clause 5 proposing to insert a new section 28 into the 2003 Act*

6.21 Proposed new section 28 provides that once the Treasurer has fulfilled all his obligations for 'winding up' the 2003 Act, he must publish a *Notice* in the *Government Gazette* to the effect that:

- he has concluded all the affairs for which the Bill provides; and
- the 2003 Act expires at the end of the day on which the *Notice* is published.

6.22 The Committee noted the Treasurer's comment that:

*If a future WA government adopts a different policy, there is nothing in the Bill or in the Commonwealth legislation to prevent the WA Parliament from passing new WA legislation to re-establish a WA based unclaimed superannuation money scheme, and the Government could then withdraw WA public sector funds from the centralised unclaimed super arrangements with the ATO.*

*As a matter of law, neither the consent of the Commonwealth Parliament or Government, nor of any other State or Territory, would be required.<sup>47</sup>*

6.23 The Committee has reservations about the above statement. Expiring the Bill diminishes the sovereignty of the Western Australian Parliament (especially in the absence of an intergovernmental agreement) because there is then no capacity to compel the Commonwealth to return unclaimed money and historical records should Western Australia decide at some point in the future to legislate to re-establish a Western Australian based unclaimed superannuation money scheme. This was confirmed in the following exchange:

**Mr Meschino:** *In short, the answer is that there is nothing that can be done for that period following the transfer if, hypothetically, the State, or the Parliament, did decide to take the administration back to the State. The reason being is, once transferred, they are operating under Commonwealth law, and the advice that we had from the State Solicitor and also Parliamentary Counsel is that while the State at any time is free to transfer any ongoing or future administration back to the state, they would not be able to override Commonwealth law for that period; and if they attempt to do so, it probably would be invalid, being inconsistent with Commonwealth law.*

*So, in short, the answer is no; if the state does agree to opt into the Commonwealth mechanism for unclaimed lost super, if the money and the records are transferred, and while it is operating under Commonwealth framework, the State cannot legislate to bring money in that period back to the State.*

**The CHAIRMAN:** *So the statement that has been provided to the Committee that a future State government could legislate and re-establish a WA fund is actually not really 100 per cent accurate*

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<sup>47</sup>

Attachment to a letter from the Treasurer, Hon Troy Buswell MLA, 21 September 2012, p3.

*because we would have to be re-establishing a new fund, but that would be inconsistent with Commonwealth law so we could not do it in any event.*

**Mr Meschino:** *No, that is not true. What the state could do, if it chose—let us say, hypothetically, it was transferred to the Commonwealth and for whatever reason the state, the Parliament, decided that the Commonwealth was not doing a good enough job, we believed we had done a better job and wanted to take it back, we simply would opt out of the Commonwealth arrangement and from that point on the state will manage the unclaimed super under a state arrangement.*

**The CHAIRMAN:** *But there is no agreement in place for the commonwealth to return any unclaimed funds back to the state or any historical records back to the state, if the state were to decide to establish its own scheme.*

**Mr Rodin:** *With that, you would have to undergo some policy process and some consultation. But one would imagine that would be difficult for the Commonwealth to return moneys having been transferred to them.<sup>48</sup>*

- 6.24 In an *Answer to a Question on Notice*, the Department of Treasury said withdrawal is not retrospective:

*Amounts which were paid to the Commissioner while the scheme was participating would not be able to be returned to the scheme; the Commissioner would continue to hold the monies that were paid while the scheme participated and deal with these monies as required by the Commonwealth legislation.<sup>49</sup>*

- 6.25 The Treasurer referred to a “*limited*” impact on parliamentary sovereignty:

*Once the State has transferred the money and administrative records to the Commonwealth, the Parliament will be unable to legislate further with respect to these.<sup>50</sup>*

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<sup>48</sup> Mr Frank Meschino, Assistant Director, Superannuation Management, Department of Treasury, *Transcript of Hearing*, 8 October 2012, pp12-13.

<sup>49</sup> Answer to *Question on Notice* Number 4 from a Hearing on 8 October 2012

<sup>50</sup> Attachment to a letter from the Treasurer, Hon Troy Buswell MLA, 21 September 2012, p2.

6.26 However, the Committee is of the view that in proposing to expire the 2003 Act (and in the absence of an intergovernmental agreement as to future arrangements), sovereignty of the Western Australian Parliament is non-existent with respect to that unclaimed money and historical records.

**7 FURTHER AMENDMENTS TO THE BILL**

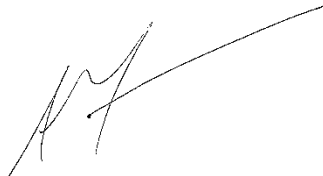
7.1 The Department of Treasury advised that no further amendments are proposed for the Bill.<sup>51</sup>

**8 FINAL RECOMMENDATION**

8.1 The Committee makes the following recommendation.

**Recommendation 2: The Committee recommends that the Minister representing the Treasurer defer passage of the Unclaimed Money (Superannuation and RSA Providers) Amendment and Expiry Bill 2012 until the Minister reports to the Legislative Council on Recommendation 1.**

8.2 The Committee commends its Report which lists three findings and two recommendations to the Legislative Council.



**Hon Adele Farina MLC**

**Chairman**

**Date: 25 October 2012**

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<sup>51</sup> Mr Frank Meschino, Assistant Director, Superannuation Management, Department of Treasury, *Transcript of Hearing*, 8 October 2012, p16.





**APPENDIX 1**  
**LIST OF STAKEHOLDERS AND SUBMISSIONS**

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Ms Toni Walkington ( <b>Submission number 1</b> ) Community & Public Sector Union Civil Service Association of WA
Ms Fiona Roche Acting Public Sector Commissioner Public Sector Commission
Mr John Langoulant Chairman Government Employees Superannuation Board
Ms Chris Vitler Secretary Police Union