



8 October 2004

Ms Erica Lejins
Senior Advisor
Superannuation Retirement and Savings Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: superannuation@treasury.gov.au

Dear Ms Lejins,

RE: REVIEW OF THE PROVISION OF PENSIONS IN SMALL SUPERANNUATION FUNDS

Thank you for the opportunity to provide input to the discussion paper on this topic. As advisors involved in all aspects of superannuation our members have provided feedback on the impact of the budget measures and the challenges they are causing retirees. This feedback addresses a number of areas:

1. that the concerns outlined have not been adequately addressed by the legislation.
2. that there are ways that defined benefit pensions could be offered in small funds addressing guarantees and estate planning.
3. The impact that the legislation is having on APRA regulated funds which offer defined benefits and their ability to change arrangements.

Many of these areas were addressed in our submission to the Senate Economics Committee dated 18 June 2004, in which we expressed our concerns that the legislation does not resolve many of the issues this legislation seeks to address.

In particular, that the RBL compression strategies have not been minimised but merely restricted to those opting to use funds with greater than 50 members to provide their income stream. This would be better addressed via an amendment to the RBL valuation method in the Income Tax Assessment Act.

We request you consider the issues outlined and proposed solutions in our earlier submission.

Further to our earlier submission we note the following practical issues being experienced by members and their clients.

- *Family Law splits and defined benefit pensions.* The draft ATO circular indicates that the commutation and split of a defined benefit pension as a result of a splitting order, after 1 July 2005, results in the member not being able to recommence a defined benefit pension. This occurs as the assessment of the pension will result in it falling outside the limited interpretation of governing rules as express by Treasury and the ATO. This event is outside of the members control and the legislation further penalises the individual at a sensitive time. This should be considered a resettlement and within the definition of governing rules.



- *Successor fund transfers.* The Superannuation Safety legislation requires trustees to gain a licence or windup the fund. In turn this legislation has placed limitations on funds with less than 50 members offering new members a defined benefit or pension. The interaction of these two legislative requirements is causing difficulties for funds wishing to transfer to a master trust arrangement. This arises as the subplan under the master trust is considered to be a new fund and unless the transferring fund has more than 50 members the members would need to be treated as accumulation members. It is difficult to match these benefits in an accumulation arrangement. Clarification on this matter is required to ensure that members are not disadvantaged by a trustee decision to wind up the fund rather than becoming licenced.

Please see below our further discussion with respect to the specific issues set out in the terms of reference.

Design features of prospective pensions

The Market Linked Income Stream design is one with little leeway for error. The member is required to have accounts prepared and audited within 1 or 2 months of the year end e.g. 30 June 200XX to ensure Centrelink receives the required information in a timely manner. This is also required to ensure that the member does not take a pension in excess of the maximum identified. This is required as Market Linked Income Stream products pose a significant risk of non-compliance as one dollar of payment over or under the pension calculated results in a breach. The annual fluctuation in the pension amount payable each year will result in a lack of certainty of income from year to year.

When using a defined benefit pension the member has access to a constant income which makes planning from year to year easier. This certainty is desired by those self funded / partially self funded retirees who need to ensure that they have sufficient financial resources to maintain their lifestyle.

The key concerns such as unintended tax, social security and estate planning benefits can be addressed via the actuarial requirements surrounding the determination of the pension paid and the reserves required. These standards could be similar to those applied by the government actuary when assessing the actuarial findings to determine the appropriateness of a pension for Centrelink purposes and applied to all defined benefit pensions.

Management of investment, liquidity and mortality risks

The management of risk is addressed by the trustees and actuary. To assist in the management of these risks the regulators could provide guidance on investment classes and ranges recommended to ensure an increased likelihood of the fund complying with the requirement to pay the benefit for the required period. The estate planning concerns could be managed through the adoption of a fixed term pension with no residual capital value, such as those currently available, rather than lifetime pensions. In this circumstance only those dying during the term of the pension would receive an estate planning benefit, that would be taxed accordingly.

Future demand for pensions with defined benefit characteristics

We predict that as the system matures and people have more money at retirement they will need to consider their options for ensuring that they have sufficient income. The desire for certainty is likely to drive those who were on lower incomes in employment, and hence have modest superannuation balances, towards defined benefit pensions. This is based on cases of a similar nature our members are currently seeing as advisors.



Should you wish to discuss the contents of this submission further please do not hesitate to contact me on 02 9290 5613 or Susan Orchard 03 9502 4371.

Yours sincerely



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