

13 October 2021

The Director  
Tax and Transfers Branch  
Retirement, Advice & Investment Division  
Treasury  
Langton Crescent  
Parkes ACT 2600

By email: [superannuation@treasury.gov.au](mailto:superannuation@treasury.gov.au)

Dear Sir/Madam

**Retirement Income Covenant – September 2021**  
**Submission by the Trustee of the Crown Employees (NSW Fire Brigades Firefighting Staff Death and Disability) Superannuation Fund ABN 60 532 453 567 (Fund)**  
**Our ref: PHC/NSW029-00001**

We act for NSW Fire Brigades Superannuation Pty Limited, the trustee of the above Fund.

**Fund benefits**

1. The Fund, which is a regulated superannuation fund, has been established to provide death and disability benefits to NSW firefighters.
2. The benefits that the Fund provides are those set out in the Crown Employees (Fire and Rescue NSW Firefighting Staff Death and Disability) Award (Award). The current award being the 2020 award, which was made by the Industrial Relations Commission of NSW, IRC matter no. 44143 of 2020.
3. Benefits are payable by the Fund in the event of death or total and permanent incapacity of a firefighter member. The Fund does not provide retirement benefits, or benefits in any other circumstances other than on death or total and permanent incapacity.
4. The benefits depend on whether the death or total and permanent incapacity occurs while on duty or off duty.
5. In the case of on duty total and permanent disability, the firefighter receives a pension up until age 67. The pension may be commuted.
6. In the case of the death of a firefighter on duty, leaving a spouse, the spouse of that firefighter receives a pension until death of the spouse. That pension may be commuted. There are also children's pensions payable until age 18 or subject to education to age 25. Children's pensions are not commutable.
7. In the case of off duty death and total and permanent incapacity benefits, these are a lump sum.

**Retirement Covenant issues**

8. The Trustee is concerned that although it does not provide retirement benefits, the current exemption from the proposed Retirement Income Covenant contained in the Exposure Draft

**Sydney**

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*Treasury Laws Amendment (Measures for a Later Sitting) Bill 2021*: Retirement Income Covenant does not exclude the Fund from the obligation to comply with that Covenant.

9. Proposed s 52AA(3) proposes to exclude a person who holds a defined benefit interest where the person is not eligible to commute that benefit. Even assuming the definition of defined benefit interest applies to members of the Fund, they are eligible to commute their benefit (if a pension benefit crystallises) and accordingly the exemption does not apply to all members.
10. The **Exposure** draft does not define "Defined Benefit Interest". There is no definition of "Defined Benefit Interest" in the *Superannuation Industry (Supervision) Act 1993*.
11. There is a definition of "Defined Benefit Interest" in the *Superannuation Industry (Supervision) Regulations 1994* in reg 1.03AA. This definition does not apply members of the Fund because reg 1.03AA(2) excludes from the definition of "Defined Benefit Interest" in the regulation benefits that are only payable on death or invalidity.
12. For this definition to apply, reg 1.03AA(1) needs to apply without the exclusion in sub-reg (2) applying. In addition for the obligation not to apply the ability to commute needs to be excluded.
13. I note for the purposes of the definition of "Defined Benefit Member" for the MySuper legislation reg 1.04(3A)(e) was passed to exempt the Fund. The same approach could be used by reference to the 2020 Award to exclude members covered by the Award. I note there would need to be the ability to exempt by regulation.

Your favourable consideration of the solutions suggested above would be appreciated.

Yours faithfully



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