

Chapter One

Background

Introduction

1.1 This chapter provides:

- a) Background information to the regulations;
- b) Information on current levels of portability in Australia;
- c) An analysis of the main provisions of the draft and gazetted portability regulations; and
- d) A summary of parties making submissions to the inquiry.

Background to the regulations

1.2 Treasury defines portability of superannuation as the ability of a member to roll over/transfer existing superannuation benefits from one regulated superannuation fund, approved deposit fund (ADF) or retirement savings account (RSA) to another regulated superannuation fund, ADF, RSA or exempt public sector superannuation scheme (EPSSS).¹

1.3 This is distinct from choice of superannuation (choice), which refers to the ability of employees to choose the fund to which their employer directs future superannuation guarantee (SG) contributions. Choice of superannuation was most recently brought before the Parliament in the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002.

1.4 In its 2001 pre-election statement on superannuation, *A Better Superannuation System*, the Government restated its earlier commitment to the introduction of portability of superannuation. The Government's stated position was that workers should have the freedom to decide who manages their superannuation and the right to move their benefits from one fund to another.²

1 Commonwealth Treasury, *Portability of Superannuation Benefits: Enhancing the Right of Members to Move Existing Benefits Between Superannuation Entities*, Consultation Paper, September 2002, p. 5.

2 *Submission 25*, Treasury, p. 1.

1.5 In September 2002, Treasury released for comment a consultation paper on portability entitled ‘Portability of Superannuation Benefits: Enhancing the Rights of Members to Move Benefits between Superannuation Entities’. In this paper, Treasury argued that portability of superannuation in Australia would have a number of benefits:

- a) It would assist in addressing the issue of multiple superannuation accounts;
- b) It would increase competition between superannuation funds and place pressure on funds to reduce fees and charges; and
- c) It would complement the Government’s choice of funds legislation. As stated in the consultation paper, choice provides employees with an opportunity to choose the fund into which their future mandated SG contributions are paid. Portability allow individuals to move existing contributions and earnings into the fund of their choice.³

1.6 Although not in the formal objectives stated in the Treasury consultation paper, the Committee notes that the Assistant Treasurer, Senator Coonan, has also publicly referred to the importance of consumers being able to get out of poorly performing funds. In her media release C040/03 dated 25 May 2003, Senator Coonan stated:

Portability will allow Australians to transfer benefits from their current superannuation fund to a fund of their choice. This will allow members to consolidate their superannuation benefits into one fund if they so wish. Maintaining superannuation benefits in multiple funds can significantly erode an employee’s retirement benefit and lead to lost superannuation accounts.

1.7 Following receipt of comment on the consultation paper, Treasury released draft portability regulations for public consultation on 27 May 2003. Following a further period of consultation, the Government gazetted final portability regulations on 30 July 2003. They are:

- a) the Superannuation Industry (Supervision) Amendment Regulations 2003; and
- b) The Retirement Savings Accounts Amendment Regulations 2003.

1.8 It is notable that while it is proposed that portability be implemented by regulation rather than an Act of Parliament, other provisions dealing with roll overs and transfers of benefits are also dealt with in regulation made under the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

3 Commonwealth Treasury, *Portability of Superannuation Benefits*, pp. 5-6.

Current portability in Australia

1.9 Both Treasury and the Australian Prudential Regulation Authority (APRA) have separately noted that current portability arrangements in Australia vary for members of Superannuation funds and ADFs on the one hand, and members of RSAs on the other. Accordingly, member access to portability in Australia at present depends on each fund's governing rules:⁴

- a) Members of Superannuation funds and ADFs: There is currently no provision within the SIS Act that requires a fund to roll over/transfer existing superannuation benefits at the request of a member. By default, the ability of a member to roll over/transfer existing superannuation benefits is regulated by each individual fund's governing rules.⁵
- b) Members of RSAs: Under the *Retirement Savings Accounts Act 1997*, RSA providers are required to provide portability. Under section 50 of the RSA Act, an RSA provider must, at the request of a member, roll over/transfer the requested amount as soon as practicable or, if the contract or agreement for the provision of the RSA specifies a period, within the period specified. In any case, the roll over/transfer must be made within 12 months after receipt of a written request.⁶

1.10 In its written submission, APRA made the following observations on the general availability of portability in Australia, based on its regulatory reviews and on-site visits to superannuation funds:

- Most retail funds offer roll overs/transfers but apply fee-related conditions. For example, an exit fee scale may vary according to the length of time the member has been in the fund, or an entry fee may apply.
- Few corporate funds roll over/transfer members' accumulated benefits from the fund whilst the member is still employed by the contributing employer. Cessation of employment prior to retirement will generally, under fund rules, trigger a requirement to leave the fund.
- Some industry funds will not roll over/transfer benefits whilst the member remains in the same industry, however the policy varies from fund to fund.

1.11 The Committee notes that APRA also indicated in its written submission that it collects general data on membership flows, including exits by roll overs/transfers.

4 Commonwealth Treasury, *Portability of Superannuation Benefits*, pp. 7-8. *Submission 14*, APRA, p. 2.

5 Commonwealth Treasury, *Portability of Superannuation Benefits*, p. 7.

6 Commonwealth Treasury, *Portability of Superannuation Benefits*, pp. 7-8. *Submission 24*, Treasury, p. 1. *Submission 14*, APRA, p. 2.

During the December quarter 2002, 1.3 per cent of members of the survey fund population rolled over or transferred to another fund.⁷

1.12 In its written submission, the Investment and Financial Services Association (IFSA) also made a number of observations similar to those of APRA above on the current availability of portability:

- Retail (personal) superannuation funds do not restrict the circumstances in which consumers can transfer their personal superannuation out of a fund. Customers can request part or full balance rollovers/transfers.
- Many corporate superannuation funds (funds offered by employers, as opposed to master trusts) require a SIS trigger event before making a roll over/transfer. This would usually be on leaving the employer by resignation, retirement or retrenchment.
- Defined benefit funds generally do not allow portability of superannuation benefits. Unfunded defined benefit funds routinely restrict portability of benefits, even after a member has left employment.⁸

1.13 A full copy of IFSA's submission on the current levels of portability is at **Appendix Five**.

Main provisions of the regulations

1.14 The Government's gazetted regulations are designed to extend the ability of superannuation fund members to roll over/transfer their existing superannuation benefits to another superannuation fund, ADF, RSA or exempt public sector superannuation scheme EPSSS. The major provisions of the portability regulations are examined below:

- a) Application: The regulations apply to accumulation funds and members of fully funded defined benefit funds who have left employment with an employer-sponsor of the fund. They do not apply to unfunded public sector superannuation schemes, self-managed superannuation funds, or benefits being paid as a pension (other than an allocated pension).
- b) Timing of roll overs/transfers: The regulations require that trustees must roll over/transfer a benefit to another fund as soon as practicable, but in any case within 90 days of the request from the member.
- c) Information for members: The regulations require that, prior to making a transfer, the trustee must be satisfied that a member is aware

7 *Submission 14, APRA, pp. 2-3.*

8 *Submission 21, IFSA, pp. 2-3. See also Committee Hansard, 31 July 2003, p. 32.*

of his or her right to receive additional information on the effect of the roll over/transfer (eg. impact of fees or insurance cover) or must be satisfied that the member does not require such information.

- d) Protected members: The regulations require that fees charged on a protected member's account cannot exceed the interest credited to that account. Members who roll over/transfer money out of a superannuation fund will lose the right to protected member status within that fund.
- e) Partial roll overs/transfers: The regulations provide that if a member of a superannuation fund wishes to make a partial roll over/transfer (less than their entire withdrawal benefit), the trustee can require the member to leave a balance of up to \$5,000 behind in the fund.
- f) Frequency of roll overs/transfers: The regulations provide that a trustee will only be required to affect one roll over/transfer per year for each member of a fund, though they will be free to offer more regular roll overs/transfers if they wish.
- g) Role of APRA: The regulations provide APRA with the power to freeze or alter a fund's ability to provide portability if it believes there may be an adverse financial impact on the fund. Trustees will be able to apply to APRA to exercise this power.
- h) Commencement: The regulations are due to commence on 1 July 2004.⁹

1.15 The full text of the regulations is at **Appendix Six**.

1.16 Significantly, the Committee notes that the regulations gazetted on 30 July 2003 contained some major revisions from the draft regulations as released on 27 May 2003, as referred to this Committee for inquiry. In particular, the gazetted regulations:

- a) Introduced the new requirements in relation to information for members on the effect of a roll over/transfer (point "c" above);
- b) Introduced the restriction on partial roll overs/transfers to enable trustees to require that a member retain \$5,000 in an account following a roll over/transfer (point "e" above); and
- c) Introduced the restriction on the frequency of roll overs/transfers to enable trustees to refuse to implement more than one roll over/transfer per year (point "f" above).

1.17 Importantly, the Committee notes that almost all parties making submissions to this inquiry responded to the draft regulations, rather than the gazetted regulations dated 30 July 2003. In addition, some of the evidence given to the Committee during the hearing on 31 July 2003 referred specifically to the draft regulations. Where relevant, the Committee refers to this fact in this report and makes allowance for this in its conclusions and recommendations.

Parties to the inquiry

1.18 The Committee received submissions to the inquiry from a broad range of organisations including:

- a) Peak industry bodies such as the Association of Superannuation Funds of Australia (ASFA), the Corporate Super Association, the Australian Institute of Superannuation Trustees (AIST), the Industry Funds Forum (IFF) and the Society of Superannuants (SOS);
- b) Superannuation funds or fund trustees such as the Motor Trades Association of Australia Superannuation Fund (MTAA Super), Queensland Local Government Super, the Construction and Building Unions Superannuation (Cbus) and the Government Employees Superannuation Board of Western Australia;
- c) Professional financial and legal organisations such as the Institute of Actuaries of Australia (IAA), IFSA, Certified Practising Accountants Australia (CPA Australia), the Financial Planning Association (FPA), the Australian Bankers' Association (ABA) and the Law Council of Australia;
- d) Consumer representatives such as Taxpayers Australia and the Australian Consumers' Association (ACA);
- e) Financial service providers such as Mercer Human Resource Consulting, Watson Wyatt Australia, Australian Administrative Services (AAS) and Superpartners;
- f) Peak employee group the Australian Council of Trade Unions (ACTU);
- g) Peak employer group the Australian Industry Group (AIG);
- h) The relevant government agencies APRA and the Commonwealth Treasury.

Supporters of the regulations

1.19 The Committee notes general support for the principle of portability of superannuation, on the basis that superannuation fund members have the right to manage their superannuation.

1.20 In this regard, the Committee notes that the FPA commissioned Roy Morgan to conduct research on superannuation in November 2002. A large number of respondents to the survey supported the concept of portability. For example, eight-eight per cent of people surveyed said they would like to keep their current superannuation fund if they were to change jobs.¹⁰

1.21 However, only IFSA, the ABA, Treasury and APRA made submissions in support of the draft or gazetted regulations. IFSA supported the regulations on the basis that they provide an important improvement in the ability of Australians to place their superannuation in a fund of their choosing. IFSA argued that currently, many Australians are not able to move their superannuation to another superannuation fund unless they satisfy a trigger event or condition of release under the SIS Act or regulations.¹¹ This was reiterated by Mr Gilbert from IFSA in the hearing of 31 July 2003:

Turning to portability, we support the portability of superannuation benefits as a key consumer sovereignty issue. We stress that consumer sovereignty should be at the heart of these sorts of decisions. 'Consumer sovereignty' is a complex term and a complex concept. It includes taking into account such things as the right of consumers to select where their money should be in terms of returns, where their money should be in terms of fees and where their money should be in terms of the entity which is managing those moneys and the entities managing the moneys underneath.¹²

1.22 Similarly, the ABA, in its written submission, fully supported the regulations. The ABA indicated that the simple principle behind its position is that the best governance occurs when people are informed and freely choose which financial services provider they will trust with their funds.

1.23 The Committee also notes the evidence of Mr Murray from Treasury in the hearing on 13 August 2003 that the regulations would simply extend the availability of portability in Australia to a further group of fund members:

Portability also already exists in many forms. Many funds already provide portability. I am certainly not aware of that causing significant problems in the industry at the moment. All that the new portability regime is really doing is extending that same right to a further group of members.¹³

Opponents of the regulations

1.24 In evidence to the Committee on 13 August 2003, Mr Riordan from the Law Council of Australia argued that the portability regulations are simply unnecessary.

10 *Submission 24*, FPA, p. 2.

11 *Submission 21*, IFSA, p. 1.

12 *Committee Hansard*, 31 July 2003, p. 27.

13 *Committee Hansard*, 13 August 2003, p. 16.

Mr Riordan argued that the vast majority of superannuation fund members in Australia can already elect to transfer crystallised benefits to another nominated fund if they so wish.¹⁴

1.25 However, the vast majority of parties to the inquiry, while supporting portability in principle, opposed various aspect of the regulations, or raised significant concerns about the capacity of the industry and consumers to successfully adopt portability at this time. These issues are addressed in the following chapters.

14 *Committee Hansard*, 13 August 2003, p. 1.