

PREFACE

The Superannuation Industry (Supervision) Amendment Regulations 2003 (No. 4) and the Retirement Savings Accounts Amendment Regulations 2003 (No. 2), dated 30 July 2003, are designed to extend access to portability of superannuation in Australia. Portability of superannuation is the ability of superannuation fund members to roll over/transfer existing superannuation benefits from one regulated superannuation fund, approved deposit fund or retirement savings account to another. The regulations are due to commence on 1 July 2004.

Portability of superannuation is distinct from choice of superannuation fund, which refers to the ability of employees to choose the fund to which their employer directs future superannuation guarantee contributions.

Importantly, many superannuants in Australia already have access to portability of their superannuation funds. Under the governing rules of the vast majority of Australian superannuation funds, a member can already elect to roll over/transfer his or her crystallised benefit to any other nominated superannuation fund.

During the conduct of the Committee's inquiry, the Committee received evidence on the regulations from a broad range of parties including peak industry bodies, superannuation funds or fund trustees, professional financial organisations, financial service providers, peak employee and employer groups and the relevant government agencies. In general terms, there was support for the principle of portability, but considerable opposition to the specific terms of the regulations.

The principal concern expressed by parties about the regulations was that they would mandate the right of superannuation fund members to roll over/transfer their superannuation savings out of an active fund (ie one still receiving employer sponsored superannuation guarantee contributions) into an inactive fund. It was argued that this would effectively constitute *de facto* choice of fund, or choice of fund by the back door.

In its conclusions and recommendations, the Committee supports the principle of portability, and the ability of individuals to consolidate their superannuation accounts. In particular, the Committee supports giving individuals the ability to consolidate an inactive superannuation account into either an active account or another inactive account. Such a measure, accompanied by a targeted education campaign when the portability regulations come into effect, would achieve a reduction in superannuation account numbers in Australia.

However, the Committee believes that portability out of an active superannuation account is an issue which is better dealt with through choice of funds legislation on the grounds of efficiency and consumer protection. There may also be concerns where a person's death benefit is significantly greater than the member's account balance. In addition, portability out of active superannuation accounts could lead to an increase in superannuation account numbers in Australia, rather than the desired decrease.

Accordingly, the Committee believes that the portability regulations should be revised prior to 1 July 2004, when the regulations are due to commence, to prohibit roll overs/transfers out of an active superannuation account.

The Committee also believes that a number of other improvements should be made to the portability regulations prior to 1 July 2004, including:

- Revising regulation 6.34(2) of the Superannuation Industry (Supervision) Amendment Regulations 2003 (No.4) relating to disclosure to clarify its proposed operation and to protect trustees and employers from any retrospective legal action;
- Revising regulation 6.30(2)(c) of the Superannuation Industry (Supervision) Amendment Regulations 2003 (No.4) to exclude defined benefit schemes from the provisions of the regulation where the member's current entitlement is in accumulation or partially vested form;
- Excluding Queensland Local Government Super (and any other funds in a similar position) from the operation of the Superannuation Industry (Supervision) Amendment Regulations 2003 (No.4) due to the particular nature of the scheme under state legislation;
- Including a roll over/transfer protocol, based on consultation with the industry, to help facilitate roll overs/transfers;
- Examining the timing, suspension and variation of roll overs/transfers under regulations 6.34, 6.36 and 6.37 of the Superannuation Industry (Supervision) Amendment Regulations 2003 (No.4); and
- The inclusion of a section giving specific legal protection to trustees, in accordance with a model outlined by the Law Council of Australia.

In addition, the Committee notes additional measures which could be undertaken by Government to further facilitate the introduction of portability of superannuation in Australia. In particular, the Committee believes that when the portability regulations come into effect, the Government should commence its education campaign using the \$28.7 million allocated by the Government over four years in the 2002-2003 Budget.

Finally, the Committee observes that the gazetted regulations also raise a number of issues similar or identical to those relating to choice of fund legislation. In particular, the regulations raise issues in relation to guaranteeing the safety of any portability and choice system by ensuring consumers are fully informed and protected. These issues

were previously addressed by this Committee in its November 2002 report entitled *Provisions of the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002*.

Senator John Watson
Committee Chair