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The Senate Select Committee on Superannuation
C/– Mr Stephen Frappell
Parliament House
Canberra ACT 2600

Dear Sirs

Subject: Portability

Our submission to the Select Committee on Superannuation dated 15 July 2003 commented on the draft portability Regulations issued by the Government in late May 2003. The Government then issued revised Regulations on 30 July 2003.

Mr Frappell has requested that we comment on whether the revised Regulations issued on 30 July 2003 address the inadequacies of the May Regulations, in relation to defined benefit entitlements.

In summary, the two issues in relation to defined benefit entitlements we raised were:

1. the considerable problems that would be caused if defined benefit entitlements were subject to portability; and

2. the inconsistency between exempting contributory defined benefit arrangements and not exempting non-contributory defined benefit arrangements.

The 30 July 2003 Regulations appear, on the surface, to address our concerns through the exemption of defined benefit entitlements of members who are employees of a standard employer sponsor.

We are concerned, though, that the way in which the 30 July 2003 Regulations have drafted now raises a further issue that we believe should be clarified.

Our concern is best illustrated with an example.

It is quite common for a defined benefit fund in Australia to have a benefit design that provides:

a) on resignation prior to the attainment of a specified period of service or age, a benefit that is accumulation in nature (eg a benefit that is the sum of a member account and a company account, or a benefit that is expressed as a multiple of a member account); or

b) on attainment of the specified period of service or age, a benefit that is defined benefit in nature (eg a benefit based on a certain factor multiplied by years of service multiplied by average salary).

Such an interest should be classified as a “defined benefit component”, even where a member’s current entitlement (ie if they withdrew from the fund today) is in accumulation form (pursuant to a)). We are not convinced that this is adequately covered by the Regulations. Perhaps it is, and this is a matter of legal interpretation that can be clarified.

To avoid any doubt, we would suggest the following wording in Reg 6.30(2)(c):

> “A defined benefit component of a superannuation interest is a component of the interest in which the benefits are currently, or may potentially be, defined by reference to ....”

Other issues raised in our 15 July 2003 letter

The 31 July 2003 Regulations do not, though, address our primary concerns that:–

1. The Regulations effectively introduce “choice of funds” prior to the choice of funds legislation.

2. The Regulations introduce a broader choice than the “choice of funds” legislation.

Therefore, we believe it is inappropriate for Regulations to come into force in advance of the choice of fund legislation.

The other problems identified in our letter effectively also remain unresolved under the revised Regulations.

Yours sincerely

Brad Jeffrey

Review:

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