Senate Select Committee on Superannuation and Financial Services

Main Inquiry
Reference (c)

Submission No. 65 (Supplementary to Submission No. 28)

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Senator Watson
Chairman
Senate Select Committee on Superannuation
and Financial Services
Parliament House
CANBERRA ACT 2600

Dear Senator Watson

POTENTIAL SUPERANNUATION IMPROVEMENTS

We refer to evidence given by Michael Rice before the Committee on Monday, 15 May 2000. The Committee invited us to suggest appropriate legal amendments to the provisions dealing with transfers between superannuation funds and also to the problems caused by lack of flexibility over payment of the SG contributions.

TRANSFERS BETWEEN FUNDS

Background to Successor Fund problem

The present provisions provide for a mechanism for bulk transfers between funds without the consent of the member where the new fund confers on the member equivalent rights to the original fund and the trustees of both funds agree in writing that equivalent rights are conferred. These are the so-called "successor fund transfers".

Apart from this, a member, subject to the rules of the fund and any Award restrictions, is free to request a transfer.

The problem

Where the transferring trustee does not wish to agree to such a transfer, then it can effectively block it and so restrict mobility between funds. Even where it agrees, the trustee can be obstructive and cause great delays and additional costs, such as occurred in the example used by Michael Rice in his appearance.

In addition, there is considerable difficulty in determining whether the benefits are equivalent between the old and new funds. There is no consensus within the industry over equivalence.

For example, the sum insured on death must be at least equivalent, yet the premium can be increased (as this is not a "benefit"). We have sighted examples where trustees have argued that members have incurred reduced benefits when:

- The rules relating to nominated beneficiary are different between the funds;
- Definitions of disablement are different between funds; and
- Where TPD benefits reduce between 60 and 65 in one fund but between 55 and 65 in the new fund (leading to a potential reduction in sum insured later).

Clearly, there are difficulties in ensuring that members are no worse off in every instance. Note also that any fund can change benefit structure from time to time and this may disadvantage some members (in respect of future service entitlements) even if the great majority receives improvement.

Many employees now belong to public-offer funds, usually "Mastertrusts", but also some industry funds. The relationship with the trustee is distant, operating formally through a Policy Committee process.

The Policy Committee (consisting of employer and employee representatives for a particular employer) or the employer may form the view that the existing fund is no longer satisfactory and it would be in the interests of the employee members if they were transferred to another fund.

While it is debateable whether the employer should have this decision-making power it does seem appropriate that the Policy Committee should be able to move members in cases of poor service or performance. At present, the Policy Committee has no power whatsoever.

Suggested amendments

The definition of successor fund at reg 1.03(2) should be amended to provide that it is sufficient if there is substantially equivalent rights. There should then be an onus on the new fund trustee to advise members of any instance where benefits differ and may potentially be reduced.

A certificate from a suitably qualified independent professional to this effect should be required. Such professionals could include actuaries and lawyers working in superannuation. APRA could maintain a list of these experts.

The existing fund trustee should be required to transfer the class identified by the Policy Committee if the new fund trustee is willing to give such a certificate.

In this regard, it is important to deal with a number of trustee issues.

Firstly, the existing successor fund provision is merely permissive. That is to say, it is subject to the terms of the trust. One way around this is to require, as a term of a

public offer fund approval, that the trustee permit and require transfer in terms of the successor fund provisions.

This can be done by amendment of the terms of the instrument of approval issued by APRA. It would be appropriate for there to be a supporting regulation.

The giving of directions by a new trustee and also by the policy committee requires amendment to sections 58 and 59. These sections limit directions that may be given to a trustee and limit directions that may be given to the exercise of the discretion by a trustee.

SG DISCRETION

Background to problem

Michael Rice gave an example of a case where the employer was unable to make an SG contribution due to the member retiring before the last year's contributions had been made.

Even where the employer acts in good faith, there can be cases where the contributions are not made. In these cases, it is unfair to apply the SG penalties. Yet the ATO has no discretion to act otherwise.

We also note that there are tens of millions of dollars held in uncashed SG vouchers. This indicates that the law is not entirely successful in assisting members to receive payment.

Potential Solution

There are a number of potential remedies.

First, the ATO could be allowed limited discretion in unusual circumstances. Where an employer makes the SG payment late to the fund, but with appropriate interest at the prescribed rate, the ATO could (at its discretion) allow the payment to stand (without deductibility for the employer). This would be a sufficient penalty and would avoid the bureaucratic paper-work associated with the voucher system.

Secondly, the ATO could simply pay all vouchers into a nominated superannuation fund which could then contact members and advise them of their benefits. Funds could tender for this contract from time to time. Although this leads to unconsolidated accounts, the funds would presumably contact members and try and entice them to place other super in the same account. At least, the vouchers would accrue interest.

Michael Rice also recommended monthly payment of SG contributions. It is likely that this would reduce the number of cases where payment is not made.

We trust that these comments are of assistance to your Committee.

Kind regards

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Cc Michael Rice