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1. GOVERNMENT ACTUARY'S OFFICE - STAFF

- 1.1.** The changes which have taken place in the superannuation area have changed the amount and nature of the superannuation schemes work carried out by the Government Actuary's office. This has led to a review of the structure and staffing of the office.
- 1.2** To assist you in making enquiries, you may care to note the following as first points of contact on the matters stated:

Pauline Waite: registration of new schemes; trust deed amendments; section 204Q applications.

Alan Leahey: scheme terminations (wind-ups and de-registrations).

Alix Jermyn: trustees annual reports.

Karen Fergusson: accounts.

Neil Malley: asset reversions, membership transfers, complaints from scheme members, Official Information Act requests, new state sector superannuation schemes.

If you have a query about any other matter, please refer to Pauline Waite or Neil Malley.

2. CERTIFICATES UNDER SECTION 12 OF THE ACT

- 2.1** Section 12 of the Superannuation Schemes Act 1989 requires that a certificate is given before any amendment is made to the trust deed of a registered superannuation scheme. The Act requires -

"..... a certificate that the trust deed, when amended as proposed, will comply with"

- 2.2** We are receiving an increasing number of certificates which certify that the amendment to the trust deed will comply with section 7 of the Act and not contain any provision that is contrary to those implied by sections 8 to 10 of the Act.

These certificates are not in accordance with the Act - it is the "trust deed when amended as proposed" which has to comply with section 7 of the Act and not contain any provision that is contrary to those implied by sections 8 to 10 of the Act.

3. MEMBERS INFORMATION BOOKLETS

- 3.1** Section 16 of the Superannuation Schemes Act 1989 requires that specified information must be given to persons before they become members of a registered superannuation scheme. This information is usually incorporated into a "Members Information Booklet" which is handed to prospective scheme members.
- 3.2** A new Members Information Booklet is usually produced when a scheme is substantially revised or a new "membership category" is introduced. The Act does not require a copy of that new Members Information Booklet to be forwarded to my office.

- 3.3** As part of our audit procedures, we often ask for a copy of the new Members Information Booklet to be forwarded to us. Quite frequently, we note that the new booklet contains mistakes which are serious enough to be in breach of section 16 of the Act, and leads us to ask trustees to produce a revised booklet.
- 3.4** The production of a booklet is the trustees responsibility. However, to assist trustees, we would be prepared to make informal comments on a draft booklet, as to whether - on the basis of the information available to us - the draft complies with section 16 of the Act. No charge will be made for that service, but we would appreciate being given a reasonable amount of time in which to check the booklet and make any comments.

4. SCHEME TERMINATIONS - SECTION 21 OF THE ACT

We are having a number of problems with the winding-up of registered superannuation schemes. The four most common problems which we encounter are referred to below:

(a) Winding-up resolutions (s.21(1)(a))

A copy of the winding-up resolution must be lodged with the Government Actuary within 14 days after the resolution is passed.

Please ensure that the resolution is passed by the person(s) with the power to do so in terms of the trust deed. This is not always the trustee(s).

(b) Final accounts (s.21(1)(b) and 21(1)(d)(i))

The final accounts are to show the position of the scheme as at the effective wind up date. This is the date stipulated in the resolution or, if the effective date is not stated, the date on which the resolution is passed.

A copy of the final accounts is to be forwarded to the Government Actuary and to each person who was a member of the scheme immediately before it was wound-up.

(c) Written advice regarding the basis of distribution of assets (s.21(1)(d)(ii))

The Government Actuary and the members are to be given a written statement of the manner in which the assets of the scheme are to be distributed.

We do not usually require a list of the individual amounts. Note that the Act refers to the manner in which the assets are to be distributed. Therefore, this information and the final accounts should be supplied prior to the distribution of assets.

(d) Date of the final distribution of assets (S.21(1)(e))

This is the last date on which the scheme had any assets and is the date on which the registration is deemed to be cancelled (S.21(3)).

The information should be sent promptly to me. Please keep me informed of the reason for any delays in distributing the assets.

5. TRUSTEES ANNUAL REPORTS

5.1 PROBLEMS

We also have a number of problems with trustees annual reports, and draw the following matters to your attention.

(a) **Timeliness**

Section 14(3) of the Act requires trustees to forward a copy of the report to the Government Actuary immediately on completing the report.

It would seem that some trustees, or their consultants on their behalf, are deliberately delaying sending copies of reports to this office. That action may result in trustees being prosecuted under section 25 of the Act.

(b) **Opening and Closing Balances**

In the financial statements the opening fund balance of the current report should be the same as the closing fund balance of the previous report. If this is not the case, the current report should say so, and state clearly the reason(s) why. If the difference is material, the current report should include an explanatory statement from the auditor. In future, trustees may be required to prepare and distribute revised reports which fail in this area.

Please also note that an opening and closing balance should be explicitly stated in the membership statement as well as in the financial statements.

(c) **Previous Legislation**

A number of reports and auditors statements still quote the 1976 Act and the 1983 Regulations. Please note that these have been superseded by the Superannuation Schemes Act 1989.

(d) **Balance Dates**

If a scheme changes its balance date, trustees should ensure that they provide reports which:

- (i) cover the entire period since the last report
- (ii) are for periods of not greater than 12 months - in very special circumstances, we may not insist on this if the period only slightly exceeds 12 months.

5.2 REMINDER NOTICES

Effective from July 1992, three letters will be sent to the trustees of every registered superannuation scheme which is not in the process of being wound up or de-registered.

The letters will be addressed to the trustees at their address for notices from the Government Actuary. A copy of the letter will not be addressed to the scheme administration manager.

The first letter will be sent in the month in which the balance date occurs. The letter will remind the trustees that they are required to produce an annual report.

If a copy of the trustees annual report is not subsequently received, a further reminder letter will be sent to the trustees in the month which is five months after the month in which the balance date occurs.

If a copy of the trustees report is not received within six months of the balance date, a third letter will be sent to the trustees. The letter will warn the trustees that if a copy of the report and the filing fee are not received within one month, then the Government Actuary will consider taking action in terms of sections 20, 24 and 25 of the Superannuation Schemes Act 1989.

6. HUMAN RIGHTS COMMISSION AMENDMENT ACT 1992

- 6.1** This Act amends the Human Rights Commission Act 1977 and the Superannuation Schemes Act 1989.
- 6.2** Section 88A of the Human Rights Commission Act 1977 provides that the anti-age discrimination provisions of the Act do not apply to superannuation schemes except that, after 1 January 1993, it will be unlawful to require a person who applies for membership of a superannuation scheme to have attained a minimum age.
- 6.3** Section 88B of the Human Rights Commission Act 1977 removes the exemption given by section 88A with effect from 1 January 1995.
- 6.4** The new section 9C of the Superannuation Schemes Act 1989 implies a provision into the trust deed of every registered superannuation scheme. This provision permits a beneficiary who continues to be employed by the same employer after the beneficiary's normal retirement date to defer receipt of any benefit which the beneficiary is eligible to receive until the beneficiary ceases employment with that employer. The provision does not require the beneficiary or the employer to continue paying contributions after the normal retirement date.

7. STATE SECTOR SUPERANNUATION

- 7.1** State Sector superannuation schemes which are alternatives to the Government Superannuation Fund:
- (a) must be registered under the Superannuation Schemes Act 1989;
 - (b) must meet the appropriate criteria as specified in the following Acts:
 - Area Health Boards Act 1983
 - Defence Act 1990
 - Police Act 1958
 - State Sector Act 1988
 - (c) Your attention is drawn to -
 - * Area Health Boards Amendment Act 1992
 - * Defence Amendment Act 1992
 - * Police Amendment Act 1992
 - * State Sector Amendment Act 1992

8. THE SUPERANNUATION SCHEMES (FEES) REGULATIONS 1992

- 8.1** These Regulations come into force on the 28th day after the date of their notification in the Gazette. They were published in the Gazette on 8 October 1992.

8.2 The Regulations prescribe fees payable under the Superannuation Schemes Act 1989, and replace The Superannuation Schemes (Fees) Regulations 1991.

The effect of the revision in fees is to reduce the potential fee payable by small schemes, and to increase the fee payable by the larger schemes. After a transitional period, the three separate fees for trust deed amendments, trustees annual reports and actuarial reports will be replaced by one composite fee.

8.3 The new fees for superannuation schemes -

- * will replace the three separate fees for trust deed amendments (\$60), trustees annual reports (\$100) and actuarial triennial reports (\$100) by one composite fee. The composite fee, payable at the time the trustees annual report is filed, is -
 - \$100 plus \$50 per \$0.5 million or part thereof of net assets in excess of \$1 million, maximum total fee \$2,000;
- * increase the fees for registration of new schemes and filing final accounts for terminating schemes from \$75 and \$60 respectively to \$100;
- * increase the fee for the late filing of reports from \$12 to \$20 per month.
- * increase the fees for special considerations required for scheme de-registrations, asset reversions and tax-induced changes to schemes (sections 19(2), 22 and 47 of the Superannuation Schemes Act 1989), from \$75 to \$100 per half-hour spent in considering the application.
- * increase the fee for applying for a scheme to be classified as "Qualifying" under section 204Q of the Income Tax Act 1976 from a flat \$50 to \$100 per half hour spent in considering the application.

8.4 A separate fee for a trust deed amendment will not be required if the fee for the latest trustees annual report forwarded to the Government Actuary has been calculated in accordance with the 1992 Fees Regulations and paid to the Government Actuary's office.

8.5 A separate fee for a report on an actuarial examination of a scheme will not be required if the fee for the latest trustees annual report forwarded to the Government Actuary has been calculated in accordance with the 1992 Fees Regulations and paid to the Government Actuary's office.

9. MISREPRESENTATION

9.1 I have noticed a number of instances where my office's stance on particular matters has been seriously misrepresented to trustees by consultants who should be well aware of the correct position. Fortunately, the number of these cases is fairly small. However, the fact that this has occurred at all is of concern to me.

9.2 Any trustee who considers that my office's alleged stance on a particular issue is somewhat harsh or illogical is invited to express his or her concern by telephoning me collect on Wellington 472-5470 and/or writing to me personally and/or seeking an informal meeting with me.

I will deal with any such matter on a confidential basis, as informally or as formally as the enquirer wishes.

10. ANNUAL REPORT

- 10.1** A copy of my annual report for the year ended 30 June 1992 to the Minister of Finance is enclosed.

N T Malley
Government Actuary