

NEWSLETTER NO. 28 : MAY 1994

OFFICIAL INFORMATION ACT

1. INTRODUCTION

- 1.1 The Chief Ombudsman has indicated his view that the Official Information Act 1982 does not apply to information gained by the Government Actuary in the course of the Government Actuary's duties and responsibilities under the Superannuation Schemes Act 1989. Section 52(3) of the Official Information Act 1982 and section 26 of the Superannuation Schemes Act 1989 refer.
- 1.2 I have been advised that the Government Actuary has discretion to release information relating to registered superannuation schemes. Any decision by the Government Actuary were to release, or not to release, information is subject to the objection procedures stated in section 23 of the Superannuation Schemes Act 1989.
- 1.3 In order to assist with the smooth administration of the Superannuation Schemes Act 1989, it is appropriate for the Government Actuary to indicate how those discretionary powers may be exercised.

2. GENERAL PRINCIPLES

- 2.1 Scheme trustees, members and beneficiaries; financial institutions, sponsoring employers, administration managers, investment managers, solicitors, consulting actuaries and other advisors; complainants and "whistle-blowers": all generally deal with the Government Actuary on the basis of confidentiality. In the context of exercising discretion under 1.3, the confidentiality provisions of section 26 are a very important influence.
 - 2.2.1 Employer sponsored superannuation is a matter of private employer/employee contract.
 - 2.2.2 Persons who provide superannuation products to the general public are entitled to expect a degree of confidentiality as regards the technical details of new products.
- 2.3 The Government Actuary will not act in a manner which would restrict competition among providers of services to trustees of schemes.
- 2.4 Broad ranging "fishing expeditions" are unlikely to be viewed favourably.
- 2.5 Subject to the foregoing, the Government Actuary will bear in mind the disclosure rules stated in the Official Information Act 1982.
- 2.6 The reason(s) for requesting the information should be stated. If the reason is stated to be "public interest", the enquirers views as to why that should override 2.1, 2.2.1 and/or 2.2.2 should be given.

3. SPECIFIC EXAMPLES

3.1 A trustee, or a person acting on behalf of a trustee, may reasonably expect the Government Actuary to provide to that person in respect of that trustee's scheme -

- (a) a copy of previous trust deeds and amendments thereto;
- (b) a copy of previous trustees' annual reports and triennial actuarial reports;
- (c) a copy of any correspondence between the current and/or previous trustees and the Government Actuary's office.

If the trustee's request is not specific to a particular, say, item of correspondence, and is of a general nature, then : the trustee is expected to list the correspondence the trustee has, and to request a copy of any missing correspondence during the stated period.

3.2 A member or beneficiary, or a person acting on their behalf, may reasonably expect the Government Actuary to provide them with a copy of previous trust deeds and amendments thereto, and previous trustees' annual reports and triennial actuarial reports.

However, where the member/beneficiary is entitled to receive that information as of right pursuant to the Superannuation Schemes Act 1989, and the trustee has refused to provide the member/beneficiary with that information, the Government Actuary would probably direct the trustee to supply that information to the member/beneficiary.

3.3 Copies of legal opinions which have been -

- (a) obtained by the Government Actuary from his legal advisors;
- (b) provided by other legal advisors to their principals;

are not likely to be released.

4. COST OF PROVIDING INFORMATION

4.1 As an experiment, the Government Actuary will provide information free of charge.

However, if this facility becomes abused, or if the number and amount of information requests becomes significant, the Government Actuary will charge for the work done.