

NEWSLETTER NO. 30 : JANUARY 1995

This newsletter refers to legislation which was passed just before Christmas, and refers to some other matters which you may find to be of interest.

The Appendix shows the results of an analysis of new employer sponsored superannuation schemes.

1. Superannuation Schemes Amendment Act 1994
2. Human Rights Amendment Act 1994
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4. Financial Reporting Standard
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APPENDIX

Analysis of employer-sponsored superannuation schemes registered in the period 1 January 1993 to 31 December 1994.

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1. SUPERANNUATION SCHEMES AMENDMENT ACT 1994

- 1.1 This Act corrects changes made inadvertently to section 23 of the Superannuation Schemes Act 1989 by the Judicature Amendment Act 1991.

Section 23 refers to objections and appeals against decisions of the Government Actuary.

Three amendments have been made to section 23.

- 1.2 Firstly, section 23(4) is reinstated. The Government Actuary is once again required to notify objectors of the Government Actuary's decision within 28 days of:

- (a) receiving an objection, or
- (b) giving the objector a hearing if the objector asked for one.

- 1.3 Secondly, section 23(6) is repealed. That subsection of the Act provided for appeals against the Government Actuary's disallowance of an objection to be heard by the Administration Division of the High Court. The Administration Division has been abolished, so section 23(6) is irrelevant.

Please note that section 23(5), which provides for appeals against the Government Actuary's disallowance of an objection to be heard by the High Court, remains unaltered.

- 1.4 Thirdly, section 23(11) - which stated "The decision of the High Court on any such appeal shall be final" - has been repealed.

Appeals to higher Courts will therefore be possible once again. Currently, there are no such appeals outstanding.

- 1.5 You may be interested to know that it was not necessary to retain subsections 7 to 9 of section 23. These subsections could have been repealed because they duplicate provisions in the High Court Rules.

However, it was decided to retain them in the Act because the Act is the primary point of reference for Trustees and their advisors. The continued existence of subsections 7 to 9 in section 23 thus enhances the accessibility of the law, and avoids the need to search for the possible existence of that information.

2. HUMAN RIGHTS AMENDMENT ACT 1994

- 2.1 This Act amends aspects of the Human Rights Act 1993 as that Act affects superannuation schemes.

The deadline for removing unlawful discrimination provisions from superannuation schemes has been extended to 1 January 1996.

The legislation specifically requires that amendments to trust deeds to comply with the legislation must be made by deed. In the view of the policy advisors to the Minister, my

legal advisors and myself, this always was the case, but it seemed necessary for the legislation to make that clear.

2.2 Section 71 of the Human Rights Act 1993 states:

"The Commission shall from time to time, after consultation with the Government Actuary, report to the Minister on whether discrimination on the prohibited grounds has been eliminated from superannuation schemes."

I have noted the reported view of a number of persons that the Human Rights Amendment Act 1994 may not have clarified all aspects of the Act as it affects superannuation schemes. Accordingly, to assist me to discharge my responsibilities under this Act, my "Superannuation Administration" computer system is to be altered, so as to include a YES/NO answer to the following question for each registered superannuation scheme:

"Are the trustees of the opinion, after having obtained and considered independent legal advice, that the trust deed of the scheme complies with the requirements of the Human Rights Act 1993?"

In my view, that question can be answered in the affirmative:

- (a) at any time, after the trustees - having obtained and considered independent legal advice - are of the opinion that no deed amendment is necessary;
- (b) at the time an executed deed amendment is forwarded to the Government Actuary, after the trustees - having obtained and considered independent legal advice - are of the opinion that the deed amendment has resulted in the deed complying with the requirements of the Human Rights Act 1993;
- (c) after an executed deed amendment has been forwarded to the Government Actuary, after the trustees - having obtained and considered independent legal advice - are of the opinion that the deed as amended does comply with the requirements of the Human Rights Act 1993.

It would be appreciated if the trustees, or persons acting on their behalf, could inform us of this position at the time the relevant deed amendment (if any) is forwarded to us.

In the latter part of 1995, I shall write to the trustees of schemes where my records do not show a "yes" answer to the above question, and seek clarification of the position.

3. HUMAN RIGHTS AMENDMENT ACT (NO. 2) 1994

- 3.1 This Act has no special relevance to superannuation schemes, but is mentioned for the sake of completeness. It refers to the Race Relations Conciliator; and amends section 75(g) (Functions of Complaints Division), replacing the word "Commission's" with "Complaints Division's".

4. FINANCIAL REPORTING STANDARD 32 (FRS32)

4.1 The New Zealand Society of Accountants has issued FRS32.

With the exception of very small schemes and schemes whose benefits are fully guaranteed by insurance policies, FRS32 applies to the general purpose financial reports of all registered superannuation schemes covering periods beginning on or after 1 January 1995.

5. EXECUTION OF DEEDS : *Morley v. Spencer* [1994] 1NZLR27

5.1 We recently sought independent legal advice on the validity of a deed of amendment.

We were advised, inter alia, that the amending deed did not comply with the formalities required of a deed. The trustees (who were "natural persons" and not a "company") had signed the amending deed; and their signatures had been witnessed. However, the witnesses had not added their "place of abode and calling or description" as required by section 4 of the Property Law Act 1952.

5.2 The legal advisor also informed us that the essential requirements that must be satisfied before a document constitutes a deed were discussed in the recent Court of Appeal case *Morley v. Spencer* [1994] 1NZLR27, which referred inter alia to the importance of complying with the formalities required of a deed.

That case does not refer specifically to a superannuation scheme trust deed, but we nevertheless found it to be of interest.

6. ANALYSIS OF EMPLOYER - SPONSORED SUPERANNUATION SCHEMES REGISTERED IN THE PERIOD 1 JANUARY 1993 TO 31 DECEMBER 1994

6.1 Appendix A to this Newsletter contains full details of the analysis.

Those who do not wish to read the analysis in detail may like to refer to paragraph A.2 of the Appendix, which shows the principal results.

N T Malley
Government Actuary

APPENDIX

ANALYSIS OF EMPLOYER-SPONSORED SUPERANNUATION SCHEMES REGISTERED IN THE PERIOD 1 JANUARY 1993 TO 31 DECEMBER 1994

A.1 INTRODUCTION

The following presents the results of an analysis of all employer-sponsored superannuation schemes which were registered in the two year period 1 January 1993 to 31 December 1994.

There were 68 of those schemes.

A.2 PRINCIPAL RESULTS

- (1) Most new schemes are "defined contribution" rather than "defined benefit".
- (2) Over the two year period covered by the analysis, there has been a trend for the level of employer subsidy to be linked to the level of the employees own contributions, rather than to be a fixed stated amount.
- (3) The vesting of employer contributions occurs over a short period.
- (4) Most schemes trust deeds do not require completion of a "waiting period" as a pre-requisite to entry to the scheme.
- (5) Schemes still refer to the "traditional" retirement ages of 60 and 65, but reference is increasingly being made to the age of eligibility for New Zealand Superannuation as being the "Normal Retirement Age".
- (6) Most schemes have employer-nominated trustees and no member elected trustees, although in some cases employers have nominated an independent professional trustee to be the sole trustee.
- (7) Whilst some schemes do provide members with a choice of investment portfolio, most schemes assets are invested in "market valued" funds operated by recognised professional investment managers.

A.3 NEW OR REPLACEMENT SCHEMES

Of the 68 schemes,

46 were new schemes, and

22 replaced existing schemes.

Of the 22 replacement schemes, 18 replaced one existing scheme, two replaced two existing schemes, and two replaced three existing schemes.

A.4 BALANCE DATES

Balance Date	No. of Schemes	Balance Date	No. of Schemes
31 January	8	31 July	8
28 February	3	31 August	-
31 March	23	30 September	1
30 April	-	31 October	1
31 May	3	30 November	-
30 June	14	31 December	7

A.5 ADMINISTRATION MANAGER

Life Office	36 schemes
Consulting Actuary	21 schemes
Self Managed	1 scheme
Other	10 schemes
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	68 schemes
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A.6 INVESTMENT MANAGER

65 schemes had 1 investment manager
 2 schemes had 2 investment managers
 1 scheme had 3 investment managers

68 schemes
 =====

Investment Manager:	Life Office	46 schemes
	Other	26 schemes

72 investment managers for 68 schemes
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A.7 INVESTMENT PORTFOLIOS

8 schemes gave members a choice of investment portfolios
 53 schemes invested solely in "market value" funds
 4 schemes invested solely in "capital stable" funds
 3 schemes invested in a mix of "market value" and "capital stable" funds.

68 schemes
 =====

A.8 TRUSTEES

- 53 schemes: trustees nominated by employer (in 8 of these cases, the employer nominated an independent professional trustee).
- 2 schemes: trustees elected by the members (in one case, the employer paid no contributions; and in the other, the employer meets only the expenses of the scheme).
- 3 schemes: independent professional trustees.
- 10 schemes: have trustees who are nominated by the employer and other trustees who are elected by the members.

The compositions of the Boards of Trustees are as follows:

3 employer, 3 member:	1 scheme
3 employer, 2 member:	3 schemes
3 employer, 1 member:	2 schemes
2 employer, 1 member:	3 schemes
2 employer, 3 member:	1 scheme

	10 schemes
	=====

A.9 WAITING PERIOD FOR MEMBERSHIP

47 schemes have trust deeds which did not specify a period of service with an employer as a pre-requisite before entry to the scheme.

21 schemes have such a "waiting period"

68 schemes
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The "waiting periods" are as follows:

3 months : 2 schemes	12 months : 7 schemes
6 months : 11 schemes	24 months : 1 scheme

A.10 RETIREMENT AGE

Normal Retirement Age	Number of Schemes
50	1
55	1
60	10
62	2
65	30
NSB*	24

* age of eligibility to receive New Zealand Superannuation.

Of the 10 schemes with a normal retirement age of 60:

5 permitted retirement from age 55 with employer consent
 3 permitted retirement from age 50 with employer consent
 1 permitted retirement from age 55 without employer consent

Of the 30 schemes with a normal retirement age of 65:

earlier retirement with the employer's consent was permitted from age 55 in 13 schemes, and age 50 in 5 schemes;

earlier retirement without the employer's consent was permitted from age 60 in 7 schemes, and age 55 in 4 schemes.

Of the 24 schemes where the normal retirement age is the age of eligibility to receive NZ Superannuation:

earlier retirement with the employer's consent was permitted from age 55 in 4 schemes, and age 50 in 6 schemes;

earlier retirement without the employer's consent was permitted from age 60 in 4 schemes, age 55 in 2 schemes, age 50 in 1 scheme, after 20 years service in 1 scheme, and 5 years prior to age of eligibility to receive NZ Superannuation in 2 schemes.

A.11 NATURE OF SCHEMES

60 schemes were "defined contribution"; and
 8 schemes were "defined benefit".

Of the 8 "defined benefit" schemes:

6 replaced existing schemes, and
 2 were new schemes;

3 provided pensions on retirement, and
 5 provided lump sums on retirement.

All 60 "defined contribution" schemes provided lump sums on retirement. However, one scheme required all of the lump sum to be used to buy a pension, and one scheme required at least 75% of the lump sum to be used to buy a pension.

A.12 "DEFINED CONTRIBUTION" SCHEMES : NIL OR SMALL EMPLOYER SUBSIDY

11 of the 60 "defined contribution" schemes had an employer subsidy which was:

either nil
 or met part or all of the scheme expenses.

In 2 of these 11 cases, life assurance cover of two times salary was provided at the employer's cost.

All 11 cases specified minimum levels of employee contribution, usually as a percentage of salary rather than a dollar amount.

A.13 "DEFINED CONTRIBUTION" SCHEMES : SIGNIFICANT EMPLOYER SUBSIDY

(a) Employer Subsidy

49 schemes had a significant level of employer subsidy;

19 schemes had a fixed level of employer subsidy, usually 5% of employee salary;

8 schemes had a level of employer subsidy which varied with the length of scheme membership;

22 schemes had a level of employer subsidy which is directly related to the level of employee contribution.

In all 22 cases, the employer subsidy was subject to a maximum limit. The commonest level of employer subsidy was 1.5 times the employee contribution (prior to the deduction of Specified Superannuation Contribution Withholding Tax); and maximum limits ranged from 7% to 12% of employee salary (prior to the deduction of SSCWT).

(b) Vesting

3 schemes had no vesting of employer contributions.

In 46 schemes, "vesting" was expressed as a percentage of employer contributions and investment earnings thereon.

19 schemes were 50% vested at 5 years membership, and 100% vested at 10 years;

21 schemes provided a faster level of vesting, the 100% level being reached prior to the completion of 10 years membership; 5 of these schemes provided immediate vesting;

6 schemes provided a slower level of vesting, the 100% level being reached at durations of up to 20 years of membership.

(c) Death Benefits

In 16 schemes, the amount payable is equal to the members and employers contributions and allocated investment earnings thereon;

in 33 schemes, this amount is increased by insurance.

In 1 of these 33 schemes, the insured amount is \$50,000;

in 12 of these 33 schemes, the insured amount is equal to a stated percentage of salary multiplied by the number of years between date of death and date of normal retirement;

in 12 of these 33 schemes, the insured amount is equal to a multiple of salary, the most common multiple being 3;

in 8 of these 33 schemes, the insured amount plus the payment of contributions and investment earnings thereon is equal to a multiple of salary, the most common multiple being 3.

(d) Permanent Incapacity Benefits

All 49 schemes make a payment on permanent incapacity. In nearly every case, this amount is equal to the amount otherwise payable on death.

(e) Employee Contributions

Of the 49 schemes:

1 scheme does not accept employee contributions;

23 schemes specify employee contributions as a percentage of salary, the most common percentage being 5;

25 schemes allow the employees to choose their own levels of contribution.

(f) Categories of Membership

No. of categories of membership	No. of schemes
1	35
2	9
3	4
4	1
	—
	49
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"Membership Category" has been used to delineate different levels of employer subsidy rather than different levels of insured death/disability benefits or different levels of vesting.
