

NEWSLETTER NO. 34 : DECEMBER 1995

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1. **HUMAN RIGHTS ACT 1993**

I enclose a copy of a letter which is self explanatory.

2. **CASE LAW DEVELOPMENTS**

A case argued before the High Court may be of interest to trustees, advisors, employers and members of defined benefit employer sponsored superannuation schemes. *Re. DRG (New Zealand) Limited Superannuation Plan: Tutt & others v. A. M. Bernacchi and M. J. Smitheram*, (Auckland, M.571/93, judgement dated 4 September 1995) relates to the ownership and distribution of the reserve fund of a superannuation scheme on the sale of a part of a business.

3. **INFORMED CONSENTS**

In the Australian case *Greenwood and Commissioner for Superannuation* (1995) 21 AAR 251 (*Cth AAT*) it was decided that the members decision to transfer from one superannuation scheme to another was not an informed decision, and the transfer was therefore invalid.

4. **STATISTICAL ANALYSES - HALF YEARLY UPDATE**

Newsletter no.29 indicated my intention to publish updated statistical analyses on a six monthly basis. *The tables are excluded from this website version.*
Please contact the Government Actuary if you would like a copy of the Analysis.

5. **OFFICE CLOSURE : CHRISTMAS AND NEW YEAR**

The office will be closed from 25 December 1995 to 2 January 1996 (both inclusive).

On behalf of all the staff of the Government Actuary's Office, and myself, I wish you Seasons Greetings and Best Wishes for the New Year.

N T Malley
Government Actuary

12 December, 1995

Dear Trustees

HUMAN RIGHTS ACT 1993

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.”

The Human Rights Commission has the responsibility for enforcing compliance with the Human Rights Act. The Government Actuary has a responsibility for informing the Human Rights Commission as to whether the Human Rights Act is being complied with.

To assist me in discharging that responsibility, could you please inform me in writing by close of play on 29 February 1996 your answer to the following question:

“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 early March 1996, I will provide the Human Rights Commission with a listing of the responses I have received. The listing will include for each registered superannuation scheme, which is registered at the date of this letter, my AS reference number, the name of the scheme, its address for notices, and the response I have received to the above question. The response will be categorised as “yes”, “no”, or “no response received”. It will then be up to the Human Rights Commission to determine what course of action it wishes to take.

This letter is being sent to the trustees of every superannuation scheme which is registered under the Superannuation Schemes Act 1989 as at the date of this letter, where I have not already received a “yes” answer to the above question.

Your assistance in this matter will be appreciated.

Yours faithfully

NT Malley
Government Actuary