

NEWSLETTER NO. 51: MAY 2001

This newsletter contains:

1. Superannuation Schemes Amendment Act 2001

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The Amendment Act came into force on 3 May 2001. It makes five changes to the Superannuation Schemes Act 1989 which we would like to bring to your attention. I have offered some comment as to how we see the changes operating; I would invite any practitioner who is of a different view in any case to contact us as soon as possible.

Change to Section 9B (Implied provision as to transfer of members, etc), subsection (2).

The existing subsection (2) provided that where it was proposed to transfer all or a substantial number of members or beneficiaries from one scheme to another, the trustees of each scheme had to advise all members and beneficiaries of the proposal, in writing, and at least one month prior to the implementation date. The trustees were also required to give the Government Actuary a copy of what was being given to members, but with no requirement as to timing.

The existing subsection (2) has now been replaced by a new subsection (2), and further subsections (2A) and (2B) have been inserted.

The new subsection (2) is similar in effect to the old but now refers to subsection (2A) as to **which** persons must be notified; and to subsection (2B) as to **in what manner** they are to be notified.

The inserted subsection (2A) lists the persons to be notified as

- “(a) all members and beneficiaries of each registered scheme (**other than those members and beneficiaries that, in the opinion of the Government Actuary, are not likely to be materially affected by the proposed transfer ...**); and
- (b) the Government Actuary.” (emphasis added)

Comment: in any situation where trustees form the view that certain members and/or beneficiaries may be “not likely to be materially affected by the proposed transfer”, it is expected the trustees will ensure that the Government Actuary is also of that opinion before they determine not to notify those persons

The inserted subsection (2B) states that at least one month before the date by which written consent must be received, the trustees must advise members and beneficiaries in writing of the transfer, its implications, the date it is to occur, the date by which consents are to be received, and that a copy has been sent to the Government Actuary. Within the same timeframe, the same information has to be sent to the Government Actuary.

Comment: the purpose of this change is firstly to ensure that the Government Actuary receives a copy of any notification at the same time as members and beneficiaries, and secondly to ensure that members and beneficiaries have at least one month in which to consider the information and take advice before deciding whether or not to give consent.

New Section 9BA (Exemption from requirement to obtain written consent).

The new section 9BA states

“(1) The Government Actuary may exempt trustees of a registered superannuation scheme from the requirement to obtain the written consent of all members and beneficiaries of the scheme under sections 9 and 9B if the Government Actuary is satisfied that-

- (a) the trustees have not been able to contact all members or beneficiaries of the scheme despite having taken all reasonable steps to do so; and
- (b) the proposed action is not unreasonable in relation to the best interests of any member or beneficiary who has not been contacted.

(2) ...”

Comment: I expect trustees who wish to avail themselves of this section of the Act to provide me, in writing, with a list of the members they are seeking to have the exemption apply to, the steps that have been taken to contact them, and why, in the opinion of the trustees, the proposed action under section 9 or 9B is not unreasonable in the terms above. Any exemption given will be only in respect of listed members.

Changes to Section 13 (Accounts).

Section 13(1) has the existing paragraph (b) – “Annual accounts are prepared in respect of the scheme; and” – replaced by “Annual accounts in respect of the scheme are prepared in accordance with generally accepted accounting practice (as defined in section 3 of the Financial Reporting Act 1993); and”. Section 13(2) has its paragraph (b) expanded in the same manner.

Comment: these changes are to ensure that accounts are prepared in accordance with generally accepted accounting practice.

Change to Section 14 (Annual Reports)

Section 14(1) has 6 months replaced by 5 months. This means that in future, Annual Reports will fall due 5 months from the end of the financial year.

Comment: we are taking the view that this change will apply only to Annual Reports where the financial year ends on or after the 3 May 2001, the date the Amendment Act came into force.

Change to Section 15 (Actuarial Examination)

Section 15(2) has 9 months replaced by 7 months. This means that in future, Actuarial Examinations must be received no later than 7 months after the date as at which the financial position of the scheme was examined.

Comment: for consistency with the approach taken in relation to the change to section 14, we are taking the view that this change will apply only to Actuarial Reviews where the financial year ends on or after the 3 May 2001, the date the Amendment Act came into force. However, I would expect those responsible for preparing actuarial examinations for valuation dates prior to 3 May 2001 – particularly 31 March or 1 April 2001 reports – to make their best endeavours to comply with the new time scale, where possible.

G D Rashbrooke
Government Actuary