



2 November 2012

Senior Advisor
Superannuation Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email to: strongersuper@treasury.gov.au

Dear Sir

Exposure Draft: Superannuation Legislation Amendment (Further Measures) Bill 2012

The Actuaries Institute is the sole professional body for actuaries in Australia, providing independent, expert and ethical comment on public policy issues where there is uncertainty of future financial outcomes. It represents the interests of over 3,800 members, including more than 2,000 actuaries.

Some of the principles that guide the Actuaries Institute's inputs into public policy are:

- Acceptance of public sector involvement where the market does not meet societal needs.
- The need to take a long term policy view, with appropriate transitional arrangements.
- Ensuring that consequences of risk taking behaviour are borne by the risk taker.
- Issues of intergenerational equity.
- Clear and reliable information available for decision making.

The Actuaries Institute welcomes the opportunity to submit comments on the Exposure Draft of the *Superannuation Legislation Amendment (Further Measures) Bill 2012*. We have focussed our comments on the role of the appointed actuary.

The role of the appointed actuary

Subsection (3) of draft Section 35AD reads as follows:

(3) The appointed actuary must perform the functions and duties of an actuary that are set out in the RSE licensee law.

Our understanding is that the proposed RSE licensee law provides for an actuary to be appointed to carry out specific functions – for example to carry out an actuarial investigation or to prepare a funding and solvency certificate – rather than requiring a single appointed actuary to carry out any and all of "the functions and duties of an actuary that are set out in the RSE licensee law".

Whilst in many cases there will be a single actuary appointed to carry out all the actuarial work required for a fund, this will not always be the case.

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We are concerned that the wording in its current form may mean, for example, that an actuary appointed to prepare a funding and solvency certificate will be required by law to assess whether there are any other actuarial functions required to be carried out at that time and, if so, to undertake them. This appears to place a significant legal onus on the appointed actuary to ensure that all actuarial functions for the fund that are required by law are undertaken and completed as required by the law, and **we request clarification from Treasury as to whether or not this is the intent.**

Further on this point, we note that RSE licensee law requires the RSE licensee to appoint an actuary to perform the actuarial functions and duties that are set out in RSE licensee law, and we consider that the draft Subsection (3) would blur this responsibility in a way that is neither necessary nor appropriate.

Placing the legal onus on the appointed actuary is impractical in a number of circumstances, as the following examples illustrate:

- In the context of notifiable events – a notifiable event could occur without the actuary knowing. The actuary cannot perform the functions and duties with respect to responding to the notifiable event until notified of the event and asked to do so by the RSE licensee, and until the scope and terms of the appointment have been agreed.
- In the context of an interim actuarial investigation being required – if the fund's coverage of vested benefits falls below the trigger point, it is possible that the actuary won't know about this until being informed by the RSE licensee.
- Despite draft subsection (5), the RSE licensee may not appoint the actuary or provide all the necessary data in time for the actuary to complete the relevant task by the statutory deadline. Would the actuary then be in breach of sub-section 3 (or 4)?

We believe that Subsection (3) of draft Section 35AD is unnecessary and inappropriate and recommend that it be deleted. If this recommendation is not accepted and subject to Treasury clarifying the Government's intentions concerning the role of the appointed actuary, we request that the Exposure Draft wording of Subsection (3) be amended as follows (words in underline added):

(3) The appointed actuary must perform the functions and duties of an actuary that are set out in the RSE licensee law and which are relevant to the actuarial function to which the actuary's appointment relates.

We would be pleased to discuss the issues raised in this submission or to respond to specific questions to assist Treasury in the course of its work.

Please do not hesitate to contact Andrew Boal, Convenor of the Superannuation Practice Committee, on (03) 9655 5103 (Andrew.boal@towerswatson.com) or Chief Executive, Melinda Howes, on (02) 9239 6106 (medlinda.howes@actuaries.asn.au) if there is any way we can assist.

Yours sincerely

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