Actuaries Institute.

12 February 2024

Director
Law Division
Treasury
Langton Cres
Parkes ACT 2600

Email: miscamendments@treasury.gov.au

Dear Sir/Madam,

Consultation: Miscellaneous Amendments to Treasury Portfolio Laws 2024

The Actuaries Institute ('the Institute') welcomes the opportunity to make a submission to this consultation in relation to the proposed amendment to the financial reporting obligations for actuaries.

The Institute is the peak professional body for actuaries in Australia. Our members have had significant involvement in the development and management of superannuation in Australia, and work across APRA regulated funds, SMSFs and public sector funds.

The Institute supports the proposed amendments to Section 130 of the SIS Act and subregulation 9.03(5) of the SIS Regulations to clarify the obligations of actuaries and auditors to report to the Regulator when the financial position of a superannuation entity is unsatisfactory.

However, we recommend the opportunity be taken to make a further clarifying change to subregulation 9.03(1) of the SIS Regulations, which currently reads:

> *'(1) In forming an opinion for the purposes of paragraph 130(1)(a) of the Act or subregulation 9.31(3) whether the financial position of a defined benefit fund may be about to become unsatisfactory, a person must consider whether,* ***at the end of the 3-year period*** *immediately following the date at which the person's calculations are done, the value of the assets of the fund is likely (based on the expectations referred to in subregulation (2)) to be inadequate to meet the value of such of the liabilities of the fund as relate to the benefits vested in the members of the fund.'* (emphasis added)

The bolded words would appear to mean a fund is not to be considered about to become unsatisfactory where, on the actuary's reasonable expectations, the fund's assets are likely to exceed vested benefits at the end of the specified 3-year period but are likely to be below vested benefits at a time or times during that period.

The Institute considers that this outcome would be inappropriate – that is, in these circumstances a fund should be treated as being about to become unsatisfactory. Accordingly, the Institute provides the following guidance to actuaries in its Practice Guideline 499.03 *Prudential reporting under the SIS Act* (PG 499.03):

> *'SIS Regulation 9.03(1) refers to assessing whether a Defined Benefit Fund's financial position "may be about to become unsatisfactory" in terms of the value of assets and vested benefits at the end of the specified three year period. Members should interpret this as a continuous test;'* (Clause 11.3(b) of PG 499.03)

The Institute recommends that subregulation 9.03(1) of the SIS Regulations also be amended to align with this approach, for example by amending the above bolded wording in subregulation 9.03(1) above to:

> ***'at any time in the three-year period** immediately following the date at which the person's calculations are done'*

The Institute would be pleased to discuss this submission. If you would like to do so, please contact the Institute via (02) 9239 6100 or public_policy@actuaries.asn.au.

Yours sincerely

(Signed) Tim Jenkins

Chair of the Superannuation and Investments Practice Committee

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