



Actuaries
Institute.

24 April 2024

Retirement, Advice and Investment Division
Treasury
Langton Cres
Parkes ACT 2600

Email: superannuation@treasury.gov.au

Dear Sir/Madam,

Consultation: Amendments to the transfer balance credit provisions for successor fund transfers

The Actuaries Institute (the **Institute**) welcomes the opportunity to provide feedback on the draft amendments to the Income Tax Assessment Regulations (the **Regulations**) and accompanying explanatory statement titled *Treasury Laws Amendment Instrument 2024: Successor fund transfers and capped defined benefit income streams*. These seek to ensure individuals with a capped defined benefit income stream are not adversely impacted by a successor fund transfer (**SFT**) between superannuation funds.

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 welcomes the Regulations, which will correct a potential disadvantage that may arise when the holder of a capped defined benefit income stream (the **member**) undergoes a SFT from one superannuation fund (the **transferor fund**) to another (the **successor fund**).

While we have not identified any concerns with the Regulations as drafted, we do have a concern regarding the practical application of the Regulations to historical SFTs. We understand that it will be necessary for the successor fund to determine the amount of the credit to be applied to the member's transfer balance account (being equal to the amount of the debit that arose when the capped defined benefit income stream was commuted in the transferor fund). In the case of future SFTs that occur once the Regulations are made, we anticipate that the successor fund will seek this information from the transferor fund at the time of the SFT.

However, in the past when a SFT occurred, the transferor fund would have advised the Commissioner of Taxation (the **Commissioner**) of the amount of the debit to be applied to the member's transfer balance account. As the successor fund would have had no need for this information, we understand that it would not normally have been among the data provided by the transferor fund to the successor fund.

Given that many SFTs result in the transferor fund winding up once the SFT is affected, the Institute is concerned that the successor fund may now be unlikely to be able to obtain the amount of the debit that arose in the member's transfer balance account as a result of a historical SFT. This is of even greater concern in the case where a member may have undergone successive SFTs. The Institute considers it

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likely that only the Commissioner will hold accessible information on the relevant debit(s) to the member's transfer balance account in relation to a significant number of historical SFTs.

The Institute acknowledges that it may not always be clear from data held by the Commissioner whether a particular commutation of a capped defined benefit income stream was caused by a SFT or made for other reasons. However, as noted above the successor fund is unlikely to hold the relevant data, so in our view the process should be for the Commissioner to seek to identify, from data it already holds, whether such a commutation has occurred and whether the member may have been adversely impacted as a result, for example by matching transfer balance debits with immediately subsequent credits. The Commissioner should then make any applicable adjustment to the member's transfer balance account.

If required to assist the Commissioner identify relevant transactions, we expect successor funds would be able to (again) provide the Commissioner with the data relating to transfer balance credits reported for capped defined benefit income stream holders following a SFT. However, successor funds should not be required to submit revised transfer balance credit data to the Commissioner in situations where they do not hold this data.

We encourage Treasury to liaise with the Commissioner in this regard prior to the Regulations being made.

The Institute would be pleased to discuss this submission. If you would like to do so, please contact me at executive@actuaries.asn.au.

Yours sincerely

(Signed) Tim Jenkins
Chair, Superannuation and Investments Practice Committee