Australian Institute of Superannuation Trustees

23 January 2017

Mr Graham Hager
Australian Taxation Office
Via email

Email: superconsultation@ato.gov.au

Dear Mr Hager

Re: Draft Law Companion Guideline LCG 2016/D10: Superannuation reform: defined benefit income streams - non commutable, lifetime pensions and lifetime annuities

In brief:
LCG 2016/D10 provides guidance around how the defined benefit income cap applies to superannuation income stream benefits that are paid from a non-commutable, lifetime pension or lifetime annuity. AIST welcomes the guidance, and takes the opportunity to raise potential areas for clarification.

AIST welcomes the opportunity to comment on this draft law companion guideline (the "draft Guideline", the "draft LCG", LCG 2016/D10). As we have indicated in our submissions to date, the transfer balance cap is the most complex area of the superannuation reform package, in particular, where it relates to defined benefit interests. Consequently, we believe that the industry will welcome all guidance that is able to be provided.

Capped defined benefit income streams

We note that at paragraph 4, the draft Guideline describes its scope as covering lifetime pensions that satisfy the standards contained in subregulation 1.06(2) of the *Superannuation Industry (Supervision) Regulations 1994* (the "SIS Regulations", the Regulations).

AIST is aware of a number of lifetime pensions provided by various funds (including constitutionally protected funds) which are unable to meet these standards, due to the possibility of making commutations after 20 years in cases involving reversionary beneficiary arrangements. In some cases, a pension may commence payment to a reversionary beneficiary, who may then have six months to make a commutation.

We note that this may be outside the scope of the draft LCG, however changes to Australian longevity mean that commutation outside of 20 years is increasingly likely under reversionary arrangements. This has implications for whether a member would be subject to the defined benefit income cap, or the ordinary transfer balance cap. AIST recommends guidance for how members are assessed in these circumstances, however as a matter of urgency recommends that the ATO approach Treasury with a view to the 20 year rule stated at regulation 1.06(2)(e)(ii) being reassessed as to its appropriateness.

Payment rules from defined benefit income streams

We also note that some funds will, upon being made aware of the retirement of a member with a defined benefit interest, commence an immediate income payment, with the option to commute only being made available afterwards.

This appears to place some members in a position where breaching the transfer balance cap is unavoidable. We therefore request assurance in the draft Guideline that Commissioner discretion will be available for such instances so that members are not inadvertently affected by fund rules.

Please contact Richard Webb, Policy & Regulatory Analyst on 03 8677 3835 or at rwebb@aist.asn.au should you wish to discuss our submission.

Yours sincerely,

Tom Garcia
Chief Executive Officer

The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the $700 billion not-for-profit superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.

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