

**GUIDANCE NOTE 458
LEVEL OF EMPLOYER SUPPORT
- GUIDELINE 13 OF THE GUIDELINES FOR THE
AVOIDANCE OF DISCRIMINATION ON THE GROUNDS
OF SEX, MARITAL STATUS OR PREGNANCY IN
RELATION TO SUPERANNUATION**

APPLICATION

Actuaries who provide advice in relation to the calculation of the "level of employer support" for the purpose of Guideline 13 of the "Guidelines for the Avoidance of Discrimination on the Grounds of Sex, Marital Status or Pregnancy in relation to Superannuation" (the Guidelines) published by the Human Rights and Equal Opportunity Commission in June 1993.

LEGISLATION

This Guidance Note deals with calculations of the "level of employer support" under the Guidelines described above. The Guidelines are designed to assist trustees and employer-sponsors of superannuation funds to comply with the provisions of the Sex Discrimination Act 1984 (the Act) which take effect from 1 July 1994 in relation to superannuation. This deadline means that where an offer of non-discriminatory benefits is made, with the two month notice period specified in the Act, the offer must have been made by 1 May 1994.

FIRST ISSUED

May 1994

CLASSIFICATION

Compliance with this Guidance Note is mandatory.

1 BACKGROUND

1.1 The Act prohibits discrimination on the grounds of sex, marital status or pregnancy in a wide range of areas of public life. Those most relevant to superannuation are employment and the provision of services.

Prior to the amendments of the Act in 1991 a general exemption applied to superannuation. The 1991 amendments to the Act provide more limited exemptions.

In effect, from 1 July 1994 it is unlawful to discriminate, when providing superannuation, on the grounds of sex, marital status or pregnancy.

1.2 Exemption applies in relation to

- reasonably based actuarial or statistical data
- the provision of death benefits (and disability benefits paid to someone other than the member). It is acceptable to provide lower benefits in respect of a member with no spouse (or child) than in respect of a member with a spouse (or child)
- indirect discrimination in relation to vesting, preservation or portability
- discrimination in relation to members who have rejected, or not responded to, an offer of non-discriminatory benefits.

1.3 Discrimination is permissible under the Act provided it is based on reliable actuarial or statistical data, and provided the discrimination is reasonable having regard to those data and any other relevant factors.

For this purpose the use of gender based actuarial or statistical tables which differentiate by sex are generally acceptable, having regard to the circumstances of the particular case.

Tables which differentiate by gender based on the fund's own experience are also acceptable, where experience is sufficient to ensure the tables are reliable.

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- 1.4 The Human Rights and Equal Opportunities Commission published the Guidelines in June 1993. These Guidelines are intended to assist trustees and employer-sponsors of superannuation funds to comply with the Act.

2 GUIDELINES RELEVANT TO ACTUARIES

- 2.1 The key guideline for actuaries is Guideline 13. This is reproduced below -

"13 The basic measure of equity will be the level of employer support relative to pay, and employee contributions where they are relevant. (See Guidelines 39 and 40)

The level of support is taken to include reasonable administrative costs.

The calculation of the level of support should follow the relevant professional guidelines adopted by The Institute of Actuaries of Australia. Actuarial calculations made as part of the normal triennial review would normally serve the purpose of showing the level of employer support.

As an alternative to determining employer support, when comparing defined benefit arrangements for two groups of employees, it is acceptable to compare benefit levels directly where this is possible."

- 2.2 Guideline 39 is also relevant to this Guidance Note. It deals with the provision of equivalent benefits for different groups of employees, and states that it is acceptable to provide defined benefits for one group and defined contributions for another, provided that either the level of employer support is the same or the quantum of benefits and the options available are the same.

3 LEVEL OF EMPLOYER SUPPORT

- 3.1 Relatively few funds are likely to require actuarial determination of the level of employer support for the purposes of the Guidelines. However, where calculations are required, the Institute considers it to be important that different actuaries follow consistent principles in making any determinations.
- 3.2 To avoid unnecessary cost it is acceptable to use any assumptions adopted at the last actuarial valuation of the fund (or at the last time actuarial calculations were performed), when determining the level of employer support in a fund, where this is consistent with the principles in paragraph 3.3 below.
- 3.3 Where the level of employer support in two different funds is being compared, the same actuarial assumptions should be adopted for both funds. However, where differences can be justified on the grounds of different expected experiences, different assumptions may be used.

Any such differences must be supported by identifiable, reliable and credible actual experience of each group of members, or based on well founded general experience (such as gender based mortality tables - see paragraph 1.3 above).

- 3.4 For projected benefit funding methods the level of employer support should be determined as the expected cost for new entrants to the relevant fund, ignoring the level of funding. If the aggregate or attained age normal funding methods were adopted at the last valuation or calculation, assumptions regarding a new entrant distribution will need to be derived.

If pay-as-you go funding has been used, a notional normal employer cost (based on entry age normal funding principles) will need to be calculated. For accrued benefit funding methods the current year cost may be used, or alternatively a notional normal employer cost may be determined.

In determining any assumed new entrant distribution, the actuary should have regard to the circumstances of the case, including the structure of any group potentially being discriminated against, the current structure of the membership or subset of the fund membership under consideration, past new entrant experience and expected future experience.

- 3.5 The calculation of the level of employer support should include allowance for expenses and insurance costs paid from the fund and for tax on employer contributions. Where the benefits for new entrants differ from those for existing members, determination of the level of employer support for existing members should be determined by reference to the benefits provided for existing members.
- 3.6 Where members are being given the option of joining a new fund (or new sub-section of a fund), it may be necessary to make an assumption about the characteristics of members actually joining the fund. In the absence of further information it would be appropriate to assume that the members who join the fund (or sub-section of a fund) are representative of the members provided with an option to join.
- 3.7 Where the actuary is asked to calculate the level of employer support where a specific benefit, such as for example, a death benefit, or a normal retirement benefit is being considered, rather than a package of benefits, the level of employer support should be determined in a manner which is as consistent as possible with the principles described in paragraphs 3.1 to 3.6 above.
- 3.8 If the actuary is asked to advise whether discrimination under the Act exists in a particular fund, or in the provision of superannuation in relation to a number of funds, the actuary should first consider whether the "equivalence of benefits and options" test can be applied or whether the "equivalence of employer support" test must be used. Where practicable, the first test should be used but it will often be impossible to apply. The actuary should consider the exemptions which apply under the Act (see paragraph 1.2).

If two funds, or features of funds, have different levels of employer support, it does not necessarily follow that there is potential discrimination between the relevant groups of employees.

For example, where the difference in the level of employer support is solely due to mortality differences between males and females, based on relevant and reliable mortality tables, the difference should fall under the relevant exemption. This principle is not limited to mortality differences. However, any gender-based differences, whether in mortality assumptions or any other assumptions, need to be justifiable in accordance with the principles described in paragraph 3.3.

END OF GUIDANCE NOTE 458

