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Product rationalisation project
Corporations and Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

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Submission on "No disadvantage test"

This submission is made in my personal capacity, and does not be represent the views of my employer.

I would like to suggest that the no disadvantage test is not appropriate as a measure of whether a replacement insurance policy or managed investment scheme is fair to members.

1 There is an existing alternative criterion in the form of "reasonable benefit expectations" (RBE) that has been applied for almost 50 years in various jurisdictions to insurance, superannuation and other financial arrangements. This emphasises the expected values, which are more important in an investment context, and reasonability, which is flexible and allows for an appropriate level of materiality.

I suggest that RBE provide a much more appropriate criterion to measure justice in these circumstances.[1]

2 No detriment with a high certainty is excessively restrictive for investment related benefits. Investment markets are subject to enormous volatility and *any* change to investment is highly likely to lower payouts under some circumstances. Such changes are not necessary limited to changes to contractual form, and can arise from necessary changes such as the retirement of a portfolio manager. It is an impossibly high burden to apply – with or without a change in contractual arrangements.

It is also unnecessary as, in almost all instances, the value is "fungible": policyholders and investors are able to choose assets of equal current value that suit them – without any loss of current or expected future value. RBE provides a much better criterion.

3 No detriment with a high certainty is however insufficiently strong for insurance cover where the probability of a claim can be minutely small (less than 1 in 10,000 for some covers). Removing such cover would be unreasonable because the value is not fungible, and the policyholder may well have taken out the cover for the dreaded possibility for which cover is being removed. RBE is again a better criterion.

I would be happy to expand on the points above.

Yours sincerely

Anthony Asher

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[1] See Asher A (2001) "Fiduciary duties and Good Faith in the Management of Retirement Fund Surpluses." - The South African Actuarial Journal, 1: 1-33. http://www.actuarialsociety.org.za/Vol.-1,-2001-586.aspx