

REGULATIONS OUTLINING POLICIES COVERED BY TRANSITIONAL ARRANGEMENTS

PURPOSE

The purpose of this short discussion paper is to facilitate consultation on the wording of regulations made under subsection 295-466 of the *Income Tax (Transitional Provisions) Act 1997* (IT(TP) Act) which is inserted into the Act by Schedule 1, Item 5 of the draft legislation.

INTRODUCTION

Item 5 of the draft legislation, inserts a subsection 295-466(2) into the IT(TP) Act. It states:

- (2) Treat the superannuation benefits mentioned in paragraph (1)(b) as being *disability superannuation benefits*, to the extent that:
- (a) the superannuation benefits are conditional on the disability of the members mentioned in that paragraph; and
 - (b) the disability is described as a permanent disability in **regulations made for the purposes of this section.**

(Bold and underline added)

In order to be effective, the regulations should contain a comprehensive list that includes all the disabilities covered by policies industry has been treating as total permanent disability (TPD) policies. This will give certainty to both to the superannuation industry and the Australian Taxation Office. It will ensure that appropriate policies receive the full deduction for the premium in the years 2004-05 to 2010-11 in which the transitional provisions apply.

PRELIMINARY VIEWS ON TPD DEFINITIONS

Treasury has been informed that industry has applied a broad interpretation of the meaning of TPD as a basis for claiming full deductions for TPD premiums. In this context, Treasury understands that policies triggered by the following permanent disability events may be considered TPD policies by superannuation funds:

- Permanent disability by reason of which the insured is unable to ever again be employed in any occupation for which they are reasonably qualified.
- Permanent disability by reason of which the insured is unable to ever again be employed in their own occupation.
- Permanent disability by reason of which the insured is permanently unable to do certain daily activities without physical help from someone else.
- Permanent disability of the insured who is engaged in home duties which renders the insured unlikely to ever engage in all home duties.
- Permanent loss of sight or the functional use of one or more limbs.

FEEDBACK SOUGHT

Treasury is seeking information from stakeholders who believe that a permanent disability has been omitted from the list which will cause an appropriate TPD policy, for which a full deduction should be available in the transitional years, to be precluded.

Consideration by stakeholders should be given to the consistency between their understanding of TPD events and those described in the list above both in substance and in form. Questions to consider are:

- Is a **permanent disability** which should be regarded as a TPD event reflected in a TPD policy **not covered** by the above list?
- Does the **specific wording** of the disabilities in the above list **preclude an event** which should be regarded as a TPD event?

Treasury would appreciate examples of wording used in policies describing TPD permanent disabilities. Information on the years that such a policy was in place, the popularity of the policy amongst members, and the number of members covered by any particular policy would also be appreciated.