When you have finished with this document:

a) To return to the beginning of the HUB document (You shall know them by what they do) click here.

or

b) To return to the position in the HUB document from which you opened this document click here.

Have EISS Pension Division Members Experienced a Detriment?

It could be said that as long as an EISS taxed-source pension has an after-tax value equal to that of the original untaxed source pension the person receiving the pension has suffered no detriment. This is the position that EISS and the late Mr Allan Archer of Mercer appear to have taken.

In the 29 June 2005 discussion paper prepared for the EISS board by its executive officer, on page 7 in paragraph 7, there is reference to one of the concerns that EISS pension division members had expressed. A proposed response is given. Thus:

> 7. Members don't get any benefit from the 15% tax rebate.
> Response: This is true, but should they receive a benefit? They are still receiving the same after-tax income.

This discussion paper is accessible from the HUB document.

In the 1998 Study of the taxation status of the SA Government Superannuation Funds (see below), of which the late Mr Allan Archer was a co-author, a similar view about the possibility of members receiving a benefit from the transfer of a superannuation pension fund to the taxed environment was expressed. Thus, in paragraph 19.23 of this 1998 study one reads:

> 19.23 The Government may need to cope with demands from members of the Pension Scheme that they, as well as the Government, should share in the gains achieved. An important part of the response would be that these people are still members of schemes which have been closed because of their generosity, and yet their benefits have been continued. Thus they should have little to complain about if the advantage of applying the PJFC is not passed through to them, so long as they are not detrimentally affected. A critical point is that the benefit reductions should be such as to remove the windfall gains, but not to the extent of causing detriment to any members.

The relevant part of this 1998 document is also accessible from the HUB document.

There are two very good reasons why EISS pension division members were entitled to get an advantage from the EISS move to the taxed superannuation environment.

The first is that members of comparable pension schemes in other jurisdictions, including both New South Wales and Victoria, obtained a financial advantage.

The second is that relevant legislative provisions (Sub-clauses 11(2) and 11(3) of Schedule 1 of the *Electricity Corporations Act 1994*) allow for this (sub-clause 11(3)) and forbid an advantage going to employers (sub-clause 11(2)).

Another very important point to make in this discussion of a detriment for EISS pension division members is that the South Australian *Criminal Law Consolidation Act 1935* in its section 130 defines a detriment as:

> ***detriment*** means—
> (a) a detriment of a proprietary nature; or
> (b) a financial disadvantage; or
> (c) loss of an opportunity to gain a benefit; or
> (d) a detriment of a kind that might result from the exercise of a public duty in a particular way.

Clearly, if EISS pension division members could have received a taxed-source pension having an after tax value greater than that of their untaxed-source pension without that significantly increasing employer costs then the rule being used to calculate the pension actually received is subjecting them to a detriment. SA Superannuants, Richard Vear and Barry Foster are confident that this is the case.