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This letter refers to a paper prepared by Dr Ray Hickman of SA Superannuants for the Australian Services Union (ASU). The paper was very similar to one that Dr Hickman had sent directly to Mr Day on 11 September 2008 (refer to ‘SA Superannuants’ documents’ section of the HUB).

In the third paragraph of Mr Day’s letter he says ‘We consider that a large number of the arguments and conclusions drawn by Mr Hickman are erroneous.’ But the letter does not give even one example of a particular error contained in the paper.

Mr Day’s letter to the ASU does not attempt to refute the main claim set out in the Hickman paper that EISS was reducing its pensions by a method that was reducing employer costs for the pensions and that was, therefore, unlawful.

The three numbered points in paragraph 3 give a strong indication that Mr Day is aware of the possibility that the rule for reducing pensions is passing a financial advantage to employers but that he considers this to be a matter that the Board need not be involved in because the Board has legal advice that the responsibility for the validity of the rules rests with the Treasurer.

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3 November 2008

Mr Andy Dennard
Secretary
Australian Services Union
PO Box 2217
KENT TOWN SA 5071

Dear Andy

We refer to your letter of 14 October 2008 attaching a copy of a paper prepared by Mr Ray Hickman.

We note that you state that the paper relates to: 'whether EISS's method of calculating pensions has complied with its obligations under the Scheme'. With due respect, we consider this to be an inaccurate description of the content of the paper. The paper deals with Mr Hickman's understanding of the operation of the formula for reduction of benefits and whether this is both appropriate and consistent with the provisions of the *Electricity Corporations Act 1994* (EC Act). Accordingly, if you decide to proceed with publishing the paper, we respectfully request that you take care in accurately describing the content of the paper in any message posted to your website so as to ensure our members are not misled in a way that may damage the Board.

We consider that a large number of the arguments and conclusions drawn by Mr Hickman are erroneous. We have summarised our key areas of concern below:

1) When Mr Archer (the actuary) provided advice to the Treasurer on the changes to superannuation benefits following the privatization of the industry and hence the Scheme, we understand that he did so on a scheme-wide basis. We have a Queen's Counsel opinion that confirms this was the correct approach for the Treasurer to adopt.

   Consequently, we acknowledge that there are 'unders' and 'overs' as the benefit reduction formula applies to particular individual members and the corresponding employer costs. The Board has publicly discussed this with members previously.

   The way the benefit reduction is calculated on a taxed pension may mean that the cost of a Division 3 taxed pension may be lower than the cost of a Division 3 untaxed pension. However, it is not the Board's job to determine whether the condition relating to employer costs under clause 11(2) of Part F of Schedule 1 of the EC Act is or has been satisfied – this was a matter for the Treasurer to determine at the time of making the rule amendments. Regardless of whether the Board considers the rules to be equitable, the role of the Board is to apply the rules. The rules require that pensioners receive the same benefit after income tax without regard to how this impacts on employer costs.

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ELECTRICITY INDUSTRY SUPERANNUATION SCHEME

Members are able to apply to the Board to have their benefits paid as though they were being taken as an untaxed pension, as if the Scheme remained constitutionally protected. If members take a pension on an untaxed basis the cost is as it would have been pre-privatisation and, importantly, such pensioners are left in the same net position as pre-privatisation.

2) Irrespective of point 1), the Board's duty to comply with the rules governing the Scheme is a paramount duty and does affect the scope of the Board's other duties as a trustee.

   The Board has power to vary the rules of the Scheme, but if a variation will increase employers' contributions or employers' liability it can only be made with the consent of employers. The Board has no capacity acting on its own to make variations to the rules that impact adversely on employer liability.

   A change to the benefit reduction formula as suggested by Mr Hickman will have the effect of increasing employer liability. The Board has asked the employers whether they would support altering the benefit reduction formula so that a 15% cap applies to the reduction on pensions; all employers have stated that they will not approve such a rule change.

3) Over the years, the Board has sought extensive advice about the benefit reduction formula and the application of the rules. Last year the Board obtained the opinion of Philip McNamara QC. All advice has supported the Board's conduct in connection with the application of the benefit reduction formula. It is misleading to suggest that, in applying the benefit reduction formula as set out in the Scheme rules, the Board is not acting in accordance with its fiduciary obligations. This also extends to any allegation that the Board has failed to satisfy its obligations because it has not carried out investigations into the cost analysis undertaken by or on behalf of the Treasurer when making the relevant rule amendments in June 2002.

In view of the above, whilst Mr Hickman's paper may be useful for your purposes in lobbying the State Government for changes to the EC Act, the Board remains bound by the rules unless and until such a change is effected. Any suggestion made by you or Mr Hickman to the effect that the Board is able to do more is erroneous and misleading and potentially damaging to the Board.

Yours sincerely

Mark Day
Chairman

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