

Discussion Paper on Pensions

**Policy and Planning Division
Department of Labour & Workforce Development
Consultation Paper
March, 2010**

In 2008-09, the Minister of Labour and Workforce Development appointed a Panel to review the legislative framework surrounding private pension plans, and to make recommendations for reforms to the *Pension Benefits Act*. The Review Panel presented its report entitled **Promises to Keep** on January 27, 2009. The Pension Review Panel, which was chaired by Bill Black, and included members Dick Crawford and Ron Pink, Q.C., produced a very significant body of work. The Discussion Paper, Interim Report and Final Report of the Panel can be found on our website at <http://gov.ns.ca/lwd/pensionreview/default.asp>.

The Department agrees with many of the recommendations made by the Pension Review Committee and we indicate that in this Discussion Paper. We would like to hear more feedback from you on key recommendations where we have heard some concerns, particularly around the funding formula, and the impact of changes on the near-public sector.

Increasing costs and liabilities are the major problem, both for employers and employees. Pensions are important to the entire economy, because in the long term, our future growth and economic sustainability will rely on seniors having good incomes to contribute to the consumption of goods and services.

Several other provinces, including Ontario, Alberta and BC have also tabled reports on Pensions and have highlighted the need for improved income in retirement, and the need for greater clarity in pension plan legislation. The Finance Ministers commissioned expert reports into retirement income adequacy, culminating in a report prepared by Jack Mintz available at <http://www.fin.gc.ca/activty/pubs/pension/riar-narr-eng.asp>. Ontario also had a study done by Bob Baldwin on retirement income which found that there is a significant problem with 75% of private sector workers not having a pension <http://www.fin.gov.on.ca/en/consultations/pension/dec09report.html>.

These reports are now public, so this Consultation Paper includes a response time that will allow interested stakeholders to review those reports and recommendations and provide comments that will help frame amendments to the Nova Scotia legislation. In keeping with the practice that an open process of consultation and dialogue will result in better legislation and regulations, the Department will accept comments until **April 15, 2010** at lwdpolicy@gov.ns.ca. We appreciate your interest in responding to these recommendations.

Sincerely

Marilyn More
Minister of Labour and Workforce Development

INTRODUCTION

Canada has one of the best pension systems in the world. A recent Melbourne Mercer Global Pension Index ranked the Netherlands, Australia, Sweden and Canada as the top four countries in terms of national pension coverage. In Nova Scotia, we tend to rely on the Federal Government Programs: the Canada Pension Plan as well as the Old Age Pension, Spouse's allowance and the Guaranteed Income Supplement, to provide our retirement income.

The Canada Pension Plan provides a maximum of \$934.17 per month to Canadians retiring at age 65. Many may be retiring before that age, as the average monthly payment under CPP is currently \$472.36 per month. Old age security provides a maximum of \$516.96 per month, and the average monthly payment is currently \$464.64. The CPP has had major contribution increases throughout the 1990's, and is expected to be sustainable over the next 75 years.

The Review Panel's discussion paper, preliminary position paper and final report outlined the importance of these plans as a key pillar for our retirement income. The Panel found that the other pillars, notably personal savings and private pension plans were not keeping up. The Panel outlined the demographic changes, the issues around funding and significant challenges in terms of liability for deficits that face employer-sponsored pension plans. Fewer Nova Scotians will have a private plan to rely on in the future, and many of those that do have a plan that is under stress.

In a nutshell, there is no silver bullet around pension plan funding or regulation. The four main principles coming out of the "**Promises to Keep**" report are:

- Count all the promises made under the pension
- Add no new promises if there is a deficit
- Find a good funding method
- Give members information on the pension's funded status each year.

The biggest change in pensions is that fewer Nova Scotians have defined benefit plans. Defined benefit (DB) plans generally provide the best income levels in retirement. Some have suggested that the term "defined benefit" is misleading, as there are few guarantees that a plan will continue to exist after a major downturn in the economy or the bankruptcy of a company. The Panel reported that there had been no new DB plans created in the province in the past decade. In Nova Scotia, the majority of defined benefit plan members are found in public sector plans, which are not regulated by the Pension Benefits Act.

Private sector plans, municipal and university pension plans are regulated by the Pension Benefits Act, and the Superintendent of Pensions indicates that for 2008, there were less than 500 plans registered:

Number of Plans regulated in NS in 2008	498
Number of Plan members covered by the PBA	105,524
Number of Members employed in other provinces	25,574

Statistics for Nova Scotia 2008-09

Total Population NS	939,475 (June 2009)
Number of NS workers (total labour force)	452,800 (June 2009)
Number of NS employed	396,100 (2008)
Number of minimum wage workers (6.4%)	25,350 (2008)
Number of workers under \$9.99 (15.3%)	60,603 (2008)
Number of employed workers with Pensions Public sector employees 97,048- in 19 DB plans; 72 DC plans Private sector employees 73,603- in 145 DB plans; 265 DC plans	170,651 (March, 2009)
% of Nova Scotians with Pension Plans	40.9% (March 2009)
% of Canadians with Pension Plans	38.3% (March 2009)
Average weekly earnings	\$736.31 (October 2009)
Average yearly earnings	\$38,288.12 (October 2009)
Average income (per capita)	\$31,937 (2008)

What do Nova Scotians currently earn?

Wage levels for NS	2008	%
Under \$29,000	163,200	41.2 %
\$29, 120 - \$45,760	121,700	30.7 %
\$45,760 - \$62,400	59,700	15.0 %
\$62,400 - \$72,800	26,100	6.7 %
\$72,800 - \$83,200	11,800	3.0 %
\$83, 200 +	13,600	3.4 %
Total employees	396,100	100 %

- These figures present long term policy concerns both in terms of equity, in that the majority (**about 60%**) of our workers do not have a pension plan, and increased pressure on Government programs, especially with a large demographic nearing retirement. Our economy depends on sustainable growth to provide the kind of health care, social services and infrastructure that we have come to enjoy, and that will be difficult to sustain if a large segment of our population has a major reduction in income during retirement. There is a concern around the costs of CPP for NS employers

and employees, when 71.9% of NS workers make less than the current maximum of \$47,200 per year. Currently employers and employees share the costs of CPP, paying a rate of 9.9%.

- **For the 41% of Nova Scotians making under \$29,000**, the Federal Government programs of Old Age Security, Guaranteed Income Supplement and Canada Pension Plan as well as the Spouse's Allowance should provide adequate retirement income to replace their current earnings. For this group, increased pension contributions now would only offset their Guaranteed Income Supplement, and it would be inappropriate public policy to require this group of earners to save more now for a pension when they have other expenses that take priority. Their income will be replaced at approximately 72% in retirement. The most appropriate savings vehicle for this group is a Tax Free Savings Account, as withdrawals from this account will not be taxed when they are in retirement or impact their GIS.
- In terms of priority, for the 52% of Nova Scotians making between \$29,000 and \$72,800, this is the area where the pension system tends to not replace enough of their income for an adequate retirement.
- With this group of wage earners, the divide comes between those that have a registered pension plan and those that do not. For those that have a pension plan, they would be better off with the CPP and the pension plan, provided their employer remains solvent and they are in an industry not impacted by recent market adjustments. The CPP is indexed, whereas a number of private pension plans are not. For some, the security of the CPP would be welcome.
- For those who have no pension plan and those who are self-employed, Nova Scotia is participating with the Federal Government and other Provincial and Territorial counterparts to examine pension coverage and retirement income adequacy of Canadians. Nova Scotia will continue to push forward with other jurisdictions for solutions that will benefit all Canadians in the years ahead.

Quick Pension Facts:

- In 2008 only 40.9% of employed workers in Nova Scotia contributed to pension plans and this is down from approximately 45.5% in 1996, according to Statistics Canada. The national level was 38.3% in 2008.
- Of 396,100 employed paid workers, 234,100 people were not contributing to a pension plan in Nova Scotia in 2008. This is over 59.1% of employed people.

- In April 2008, there were 177 active Defined Benefit plans regulated by Nova Scotia; 19 were public plans; 145 were private; 13 (8%) of active DB plans are not admitting new members to the plan.
- Government programs, including the Canada Pension Plan, Old Age Supplement and the Guaranteed Income Supplement, continue to provide the majority of income support to seniors in the Atlantic region, accounting for 51% of seniors' income, well above the national share of 41%.
- In Nova Scotia, government transfers account for 47% of seniors' family income. Retirement income accounts for 37%.
- Labour force participation rates of those aged 65-69 have more than doubled in Atlantic Canada since 2001, from 6.8% to 15.6% in 2008.

The Private Sector:

Many of the private sector plans that exist in NS are related to well-established manufacturing plants and other industries. Some are DB plans that are closed to new members, and new employees are placed in DC or group RRSP plans. These moves were designed to save costs, but many are under pressure to keep the costs down to manageable levels. One of the first goals of the Pension Legislative Framework will be to do no harm to these existing plans. They may be assisted by some of the funding recommendations outlined in this discussion paper and also recommendations on mergers and continuance with other plans.

The Near Public Sector:

Many of the regulated private sector plans are in the "near public sector". Universities, municipalities, and the health care field are considered "private" but a portion of their funding comes from the Provincial Government. Universities and municipalities with DB plans believe that they should be given longer solvency funding periods or be exempt from solvency funding requirements, as their risk of becoming bankrupt or winding up is limited. The NSAHO pension plan has many members from Nova Scotia's hospitals, District Health Authorities, and government funded residential facilities, and the current rules around solvency have proved to be a barrier to step changes negotiated with their members, which are important factors for retaining these workers in Nova Scotia.

Historically, municipalities and universities have urged that they should be exempt from solvency funding, as they are not like a business and there should be some recognition that their operations pose less of a risk to the continuation of their pension plans.

The Arthurs' Report in Ontario recognized the merit in different funding rules for defined benefit plans based on the governance, funding arrangements and risk characteristics of such plans.

Many of these plans have strong governance and accountability measures in place. Other provincial jurisdictions have different rules with respect to whether municipalities and universities are subject to solvency rules, and in many cases, government run hospitals are part of the provincial pension plan and exempt from the solvency rules. This difference can mean that NS universities, hospitals and municipalities are at a competitive disadvantage when compared to other provinces.

The Government has in the past, temporarily provided university and municipalities, and multiple employer pension plans with funding relief.

The Department is open to suggestions for a risk-based approach that would meet the Arthurs' tests based on a track record of plan governance; funding arrangements; and the lower risk characteristics of the plan. A risk-based approach might include a lower percentage of solvency payments, and a planned approach towards addressing the fundamental cost drivers of the plan, to ensure it moves towards a more solid financial footing. The Ontario and Federal Government are poised to implement risk-based regulation and more can be found at their websites at <http://www.fin.gc.ca/activty/consult/pensions-eng.asp>; http://www.osfi-bsif.gc.ca/app/DocRepository/1/RA/0809/eng/6.2_e.html and at <http://www.fsco.gov.on.ca/english/pensions/IPRS-Jan2010.pdf>

Experience in other Jurisdictions

Many countries, including Britain and the US, are facing some of the same issues as Canada, and many companies including IBM, BP and Barclays are looking at closing their Defined Benefit (DB) pension plans to new members and offering new employees saving accounts for retirement savings. In 2009, over 90% of DB plans in the UK were closed to new members. A special commission was set up in December, 2009 to review the affordability of public sector pensions.

In the US, recent reports on the failure of 401(k) retirement accounts highlight their inability to provide for retirees the level of income acquired in pension plans. The timing of retirement (in a recession) can create a major deficit - a blow from which the retiree may never recover. Gunderson and Wilson agree that "a decreasing proportion of the working population is participating in employment pension plans. In Canada, they found that only about 35% of employees are covered by an employment pension, with coverage being only **24% in the private sector.**"(p.E1)

Responding to the Panel's recommendations

1. Increasing transparency of information under Pension Benefits Act

The Review Panel found that the current legislative framework is very much directed at defined benefit plans, and was not flexible in adapting to the new types of plans, notably the defined contribution or target benefit plans.

The Panel also noted issues with respect to portability of pension plans to new jobs, that some of the regulation had unintended consequences for pension plans, and the legislative environment discouraged the creation of new pension plans. This has been noted by Gunderson and Wilson in "*Encouraging Small and Medium Sized Firms to Participate in Pension Plan*" (Advocis. Sept, 2009.)

The increased regulation of pension plans has also contributed to a decline in pension coverage and the shift to DC plans which tend to be simpler and not to involve extensive regulation. As stated by Pesando and Turner (2001, p. 135): "A major factor discouraging establishment of new plans in Canada is the complexity of pension laws... **Laws designed to reduce risks to workers have become so expensive for employers to comply with that they may be counterproductive.** Some employers have switched their defined-benefit pension plans to money purchase (defined-contribution) plans or have terminated them in favour of group RRSPs." (p. 2.6)

The Panel recommended changes that would create an environment whereby pension promises would be fulfilled, by setting a new standard for solvency funding and ensuring transparency of information impacting a pension plan. This is much easier to achieve in the information age, but there are some caveats. This does not mean that an employee or retiree would obtain expensive actuarial information on a pension at the slightest request, but rather, that regular, credible information is posted on a continual basis, so that both employees and employers know how the plan is doing.

The current Act has a provision (s 16) which outlines that the documents that create and support a pension plan shall set out the obligation of the administrator to provide members with information and documents required to be disclosed under the Act. Sections 31 and 32 outline the generic information that has to be disclosed to new members and how certain information is disclosed for amendments to the plan. Sections 35 and 36 outline how information will be provided "on written request without charge" for plan members and others, but it is written in a very restrictive manner.

Response to Recommendation #1:

The Department agrees with the recommendation that these sections be
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modernized, to:

- (a)** allow greater access to information and
- (b)** to facilitate effective participation in the formulation of decisions impacting the pension plan.

There should be transparency of information about key aspects of pension plans to members. Information that is sent out annually to members should be in plain language and include information about the funded status of the plan.

2. Goals of Pension Benefits Act

The Panel found that the current Pension Benefits Act does not have a purpose that outlines the goals and objectives of the legislation. The principles the Panel would include are:

- (1) To maximize the likelihood that pension promises are met by;
 - i. Isolating pension funds from employer funds;
 - ii. Providing vesting protection so that benefits are not lost;
 - iii. Providing appropriate rules for the protection and benefit of employees in the event of discontinuation of employment, early or late retirement; and of spouses or beneficiaries in the event of the employee's death, or marriage breakdown.
 - iv. Prescribing appropriate minimum funding requirements.
- (2) To ensure that employees have appropriate access to information about their individual benefits;
- (3) To provide transparency of information about all aspects of pension plans to members; and
- (4) To promote and facilitate the implementation and continuation of pension plans.

The Department accepts the Panel's recommendations, while noting that employees want to know that the pension will be there when they need to retire. They want Government to ensure funding exists or security is in place so that they will have some income even if the employer goes bankrupt, or closes down a plant. Generally pension insurance plans are expensive to maintain, and have run into funding difficulty in the US, Great Britain and Ontario.

The Department accepts the Panel's recommendations, but would like comments on the vesting periods. Employers have expressed concerns that the vesting period be at least 12 months from starting employment, as many new employees are still in a probation period for that period, and may leave the position. Ontario has brought forward legislation requiring immediate vesting, however, employers still have the option of requiring an employee to work 2 years before they can contribute to a pension. The employee is usually allowed to purchase back any time worked once he/she becomes a fulltime employee. Gunderson and Wilson

recommend phased, gradual vesting as an incentive to employers to set up the plan. They recommend phasing in over a 3 year period, with 1/3 vesting at the end of the first year; 2/3 at the end of the 2nd year, and full vesting at the end of the 3rd year. (p 4-27)

With respect to efforts to promote and facilitate the implementation and continuation of pension plans, the Government currently only has a “modest” capacity, both in terms of human and fiscal resources, to sponsor promotional undertakings around pension plans. Gunderson and Wilson have echoed the Panel’s call for aggressive promotion of pension plans, and believe there are incentives that Governments can use to foster pensions by removing barriers to their growth. They suggest:

- Public policy should focus on DC plans and thoroughly consider how to improve the regulatory environment for DC plans. To date, public policy has concentrated its efforts on examining DB plans.
- It should be made clear that DB plans are not risk free and that while DC plans entail investment and longevity risk, these risks can be effectively mitigated.
- Harmonize federal/ provincial regulations affecting both DB and DC plans.
- Reduce administrative complexities and fees and exploit economies of scale to foster group plans by encouraging business associations, professional associations and sector councils to establish plans.
- Consider mandatory coverage, with opting out provisions, as the default option.
- Foster simplicity and transparency for DC plans by having a limited range of investment options for most members, and reduce risk with age-adjusted balanced portfolios that become more conservative as the member approaches retirement age (with safe-harbour protection for employers or groups who follow such procedures). (p. E-2)

We can work to promote the continuation and development of new pension options. However, with the sophisticated legal and accounting advice available to employers today, it is unlikely that new DB plans will be created without some strong incentives. Some incentives noted by Gunderson and Wilson include:

- Contributions to retirement savings plans should be determined on a life-time average basis.
- Past Service Contributions to DC plans should be permitted, up to the limit of the employee’s unused RRSP contribution room.

- The current 2-year 100% vesting rule should be replaced by gradual vesting over a 3-year service period.
- The age limit for contributions to retirement savings plans should be increased by three years to 74, implemented over a 3-year phase in period.
- Contribution limits for DC plans (and RRSPs) should be increased to 20% of earned income, and the maximum dollar limits should be increased proportionately. Further increases in these limits should be a priority for future fiscal policy.
- GIS recipients should be permitted to claim non-refundable tax credits that eliminate the personal income tax that they would otherwise pay.
- The OAS claw-back of 15 percent should be reduced to 10.5 percent. (Gunderson and Wilson, p. E-2)

Response to Recommendation #2:

1. The Department recommends adopting the Panel's recommendation that a purpose section be added to the legislation to indicate that the goals and objectives of the legislation are to ensure that pension funds are isolated from other employer funds; to prescribe appropriate rules for the protection and benefit of employees in certain circumstances (eg divorce; termination, etc); and to prescribe minimum funding requirements.
2. The Department would like more feedback from employers and employees on the phased-in approach to vesting over the first 2 or 3 year period. As there has been no new DB plans in the past decade, employers may be reluctant to change existing vesting rules for older plans. In Ontario, they have just amended the Act to allow for immediate vesting, however, employers are still waiting two years to allow employers to join their pension plans.
3. The Department accepts the recommendation that greater plain language information about pensions is needed for members and retirees.
4. To better promote pensions, the Department is recommending that barriers to pension growth be removed or streamlined, and that new provisions be added to allow business associations, and other groups to form pensions that will achieve better economies of scale.
5. The Department will work to enhance the incentives to pension plans, including working with the Federal Government on tax incentives that encourage pension plans for workers.

3. Issues that the Pension Benefits Act should avoid.

The Panel noted that the legislation and regulations should avoid being overly prescriptive. The administrators of pension plans should be given broad discretion to act, provided it is within the spirit and intent of the legislation. The Department agrees with this recommendation and notes that the list that the Panel has provided on what the legislation should **avoid** is very similar to the recommendations of Gunderson and Wilson noted above:

- (1) Avoid establishing minimal acceptable levels of benefit
- (2) Enforcing equity between plan members (beyond that already applicable to other forms of compensation)
- (3) Favoring one form of pension over others
- (4) Preventing new forms of pensions from being developed
- (5) Increasing regulatory burden either quantitatively or qualitatively
- (6) Discouraging the establishment or continuation of pension plans by unnecessary regulatory burden.

The Department is concerned that the regulatory burden has discouraged rather than encouraged pension plan growth, and is sensitive to the need to create a permissive rather than prohibitive framework.

Response to Recommendation #3:

The Department recommends adopting the Panel's recommendation that the legislation and regulations be construed in a permissive manner and that these key principles be incorporated into the legislation.

4. Interpretation of the Pension Benefits Act

The Panel found that the bias in interpreting the Act and regulations should be permissive, not restrictive. It recommended that if something is not forbidden and does not contradict the spirit of the Act and Regulations it should be permitted.

Response to Recommendation #4:

The Department recommends adopting the Panel's recommendation that the legislation and regulations be interpreted in a proactive manner, so that nothing is to be construed as prohibiting or limiting a pension administrator's discretion to act within the scope of the legislative framework.

In addition, the Superintendent of Pensions should be permitted to accept new pension plans and innovative proposals provided they meet the spirit and intent of the legislation.

5. Expand the Act to allow new types of plans.

The Panel recommended that jointly Sponsored Pension Plans, either single or multi-employer, should be eligible for registration and regulation as a distinct type of plan. The Department agrees with this proposal and notes that the Act should be amended to allow sponsorship of plans by business associations, unions, professional groups or sector councils. The cost and administrative burden associated with a pension plan decreases when there are many members.

The ABC plan supported by Alberta and BC, and now Saskatchewan, has been offered as a practical solution for small companies and the self-employed who cannot afford to start their own pension plans. The NS Pension Panel recommended a NS Provincial Pension Plan for these groups as well. The Province of Saskatchewan has a smaller defined contribution plan that allows small businesses and the self-employed to contribute, and it has helped to reduce management costs by covering a wide membership.

Since the December, 2009 Ministers of Finance Meeting in Whitehorse, the Federal, Provincial and Territorial governments have embarked on a process to analyze a range of possible solutions to deal with the challenges Canadians face over the coming decades as they save for their retirement years. This will involve the further examination of the national pension option commonly referred to as a voluntary defined contribution supplement to the CPP, along with other possible mechanisms that could be a benefit, such as changes to tax and pension standards legislation to improve coverage and retirement income savings for Canadians.

The department supports these types of flexible options and agrees with the broadening of the legislation to permit as many types of retirement solutions for as many types of organizations as possible.

Response to Recommendation #5:

The Department recommends the adoption of the Panel's recommendation that the legislation and regulations be amended to recognize jointly sponsored plans and those plans that may be formed by business associations, unions, professions and sector councils or by the provinces and territories.

The Department recommends that permissive language be adopted to permit the enhancement of CPP or membership in other plans that may be set up by the Provinces to assist workers with pension savings.

6. Allow Target Benefit Plans under the Act.

The Panel recommended that Target Benefit Plans be another form of pension plan available under the legislation for single employer or multiple-employer groups. Specified Multi-Employer Pension Plans are an example of this type of

plan. A Target Benefit Plan would be governed by a joint trusteeship of the plan, and require the employer(s) or sponsors to pay at least 50% of the total contributions. All contributions would be required to be used for the provision of benefits and to cover plan expenses. These plans have been operating in Ontario, and have been recommended by the Alberta/BC panel as well. Cameron Hunter, notes in *Benefits Canada*, (Feb 2, 2009) that there are pros and cons to these types of plans:

What makes target benefit plans so appealing is that they move beyond the notion that retirement benefits can only be provided by a “pure” DB or DC approach. This is accomplished by combining a DB approach **to providing** pension benefits with a DC approach **to funding** those benefits. In the process, target benefit plans effectively eliminate the plan sponsor risk associated with DB plans and significantly reduce plan member risks associated with DC plans.

For members: works much like a DB plan

- Pension benefits are determined by a set formula
- Assets are invested on an aggregate basis (benefits are not tied to investment performance on an individual’s account)
- Mortality risk is pooled (no risk of outliving retirement savings)
- Access to DB-type pension features, such as subsidized early retirement survivor pensions, pre-retirement death, and termination and disability benefits
- Surplus is used for the benefit of plan members (e.g., to improve benefits)
- Members have a say in plan governance

For employers: works much like a DC plan

- A fixed schedule of contributions: no financial liability beyond paying predetermined contributions, and pension cost for accounting purposes is equal to employer contributions (i.e., accounting costs are fixed)
- Contributions are typically expressed as a percentage of pay (or a fixed amount per hour)
- Easy for members to understand and appreciate the value of the plan

- The employer is not required to comply with CAP guidelines (*Capital Accumulation Plan Guidelines* which apply when members are offered investment choice under a DC plan).

Response to Recommendation #6:

The Department would like more feedback from employers and employees on whether Target Benefit Plans be allowed under the Act. Members would have to understand the risks of a blended DB-DC plan and be provided plain language information on what is provided under the plan. The Department notes that allowing new options and opportunities for pension plans may mean additional human resources are required for the Superintendent's office, along with the capacity to develop new risk-based requirements to review compliance with the legislation. This impact may be moderated, however, depending on the economy and what type of plans business, unions and other organizations find the most favourable to adopt.

7. Allow the Pension Benefits Act to accommodate new Plans.

The Panel recommended that the legislation be flexible to accommodate new plan designs and funding methods through subsequent regulations. This is a similar theme running through some of the above noted recommendations, and is a theme running through the reports in other Provinces. The Department supports this type of proactive view, and notes that these plans will change in the future, and the legislation should be open to accommodate these changes.

Response to Recommendation #7:

The Department agrees with the recommendation that the Pension Benefits Act be made more flexible to accommodate new plans and funding designs.

8. Adopt an Accrued Benefit Measurement to test pension strength under the Pension Benefits Act.

The Panel recommended that solvency funding and going concern valuations be abandoned, and in their place an accrued benefit measurement should be required. This method would account for all promises made, so would be helpful in tracking the costs of all new pension promises, such as the indexation of benefits. The going concern valuation was seen as being too simplistic a calculation, which can lull members into a sense of false security about how well the plan is performing. The solvency test is a stress test that looks at a complete wind up of the pension plan, so produces a far more dismal outlook, and usually requires members and sponsors to contribute more to the plan.

The Department agrees that changes to solvency funding requirements may be required, and that the going concern valuation is limited on its own. It is concerned, however, that a new ABM standard may negatively impact individual plans. This recommendation has generated the most concern from employers and employees, and represents somewhat of a challenge in terms of harmonization with other jurisdictions. The Department welcomes further feedback on this recommendation.

Response to Recommendation #8:

The Department agrees that funding to test the true strength of a pension is a goal of the legislation. We welcome feedback on the recommendation to use the Accrued Benefit Measurement method, or whether another calculation would be an improvement for the various types of pension plans.

Most other provinces have stayed with the solvency and going concern valuations, however, the Arthurs Report in Ontario suggested more flexible arrangements. The Chair recognized the merit in having different funding rules for defined benefit plans based on their

- 1) governance,
- 2) funding arrangements, and
- 3) risk characteristics of the plans.

These characteristics would generally apply to health agencies, municipalities, and universities where the pension plans have a close relationship with their funding departments. Arthurs also talks about the incentives for mergers or consolidations of pension plans (less overhead; risk spread across greater numbers) which can save plans money and achieve better economies of scale.

These types of changes would allow certain types of plans more flexibility, based on their degree of risk, governance and the funding arrangements they have with Government. Moving to a risk-based system could require more staff in Pensions to review submissions, or more verification by accountants and actuaries that governance measures were being met. As noted, this is a key recommendation that requires discussion by all stakeholders. To see more on Ottawa's progress go to <http://www.fin.gc.ca/activty/consult/pensions-eng.asp>; and Ontario, go to <http://www.fsco.gov.on.ca/english/pensions/IPRS-Jan2010.pdf>

9. Adopt minimum funding requirements for all plans.

The Panel laid out specific requirements for minimum funding for all plans as noted in **Appendix A**.

Virtually all the Pension reviews and reports across Canada have recommended moving to a 10 year solvency amortization period, an increase from the existing 5

years. The Department believes this recommendation is sound based on a long-term view of pension plan funding. Many experts believe that 5 years is a tougher standard and more protective of members' interests, however, in any system designed to achieve a balance of interests between employers and employees there has to be some flexibility to achieve the larger goal of encouraging the continuation of pension plans.

The Panel also recommended that a 5% collar be used as an attempt to provide an incentive to employers to continue to pay into the plan with less risk. This collar provision may give employers' confidence to increase funding to the plan as a type of reserve fund, without fear of increased future payment. It is assumed that many employers will be interested in this type of provision, which could hold different types of investments. We have heard from some employers that it would be helpful to allow letters of credit and recognize other instruments to help finance pension plan contributions.

Response to Recommendation #9:

The Department agrees with the 5% collar provisions, and welcomes further feedback on this recommendation and the following interdependent recommendations. To encourage greater funding and flexibility in funding, the Department is recommending that the Act allow letters of credit and other instruments to be used to meet pension plan obligations.

10. Surplus rules.

The Panel found that the uncertainty around surplus use and ownership should be mitigated, and outlined specific provisions which are attached in the Appendix A for quick reference.

Many find the discussion of a surplus a "moot point" in today's economy. The Ontario report suggested contribution holidays for employers who had funded between 105% and 125% and allowing sponsors to withdraw surplus from an ongoing plan funded at more than 125%. The Ontario report develops a very definite formula for splitting the surplus at various points in time and many employers and employees may like this certainty. The NS Panel recommends mitigating the uncertainty around use and ownership of a surplus.

Since the Panel's report, the Supreme Court of Canada has ruled in the *Kerry* case, that it is appropriate for an employer to use funds from a defined benefit pension plan to fund a defined contribution plan. This makes sense in light of the fact that most workers would want the pension fund, even a defined contribution plan or other alternative, to continue to be available for future generations, and for their fellow workers.

It should be noted in the funding rules, there may be a benefit to uniformity across the country, as this may make it easier for plans to merge and integrate, and make it easier for workers to assess the solvency of their plans.

Response to Recommendation #10:

The Department agrees that mitigating uncertainty around use and ownership of a surplus could help encourage pension plans and assist in reaching full funding.

The Department welcomes any comments on how to deal with surplus use and ownership issues.

11. Ancillary Benefits.

The Panel was consistent in its outlook that any ancillary or additional benefits promised should be treated like all other benefits, and should be funded. Some ancillary benefits may be agreed to at the bargaining table but are not fully costed. The true costs associated with these benefits may have led to their different treatment over time. Some ancillary benefits include disability benefits and benefits paid if a member dies before retirement.

Response to Recommendation #11:

The Department agrees that ancillary benefits should be accounted for in funding strategies. The Pension Review Panel included this recommendation in the Final Report but it was not considered in the Interim Paper. Any comments on how to deal with ancillary benefits are welcome.

12. Funding Transition Rules

The Pension Review Panel included funding transition rules in their recommendations as they are extremely important if there are changes to the legislation. The Panel was careful to outline that time would be needed, especially for municipalities and organizations who provide indexing in their plans, as they would experience an abrupt increase in their liabilities because of the proposed Accrued Benefit Measurement rules.

The Department would note that this relates to the preceding sections and is useful in terms of aligning the various valuation timings and bringing all the pension plans under the Panel's proposed funding rules. It is really dependent however, on stakeholders' views about whether to change funding rules.

Response to Recommendation #12:

The Department agrees that careful attention must be paid to the timing of new amendments, and their impacts on individual plans.

It would also note that temporary funding relief measures can also be provided through regulation to help plans cope with economic changes and transitional matters. Any comments on funding transition rules are welcome.

13. Partial Wind-up Rules

The Panel recommended that the legislation should indicate that upon termination, whether of an individual or a group, the member(s) should be able to take the commuted value of the pension plan, calculated on the same basis as the minimum funding standard. The Panel also recommended that the person or group be excluded from receiving any pension surplus. The employer would have to add funding to the plan if it went into a deficit.

Response to Recommendation #13:

The Department supports measures that will speed up payouts and make partial wind ups easier, recognizing that there is a trade off and that is that a worker or group is excluded from any future pension surplus. The Department anticipates that some multi-employer plans, and those which will see a larger number of terminating members in the next several years, would have difficulties funding solvency deficiencies utilizing current rules. One suggestion is relaxing these rules so that funding is only required to the extent that such amounts are over 5% of plan assets since the last valuation report.

Further comments on funding transition rules are welcome.

14. Closure and Use of surplus

The Panel recommended that if an original plan is **closed** to new members and there are no new accruals, any surplus in an original plan should be transferable to a new plan according to the surplus rules that are noted in the Panel's report.

The Panel is recommending a legislative mechanism that would allow transfers to a new plan. The recommendation appears to support the Supreme Court of Canada decision in the *Kerry* case, and is a useful mechanism to avoid prolonged legal debate over prohibited transfers.

Response to Recommendation #14:

The Department agrees with the rationale put forward by the Committee welcomes any further comment on this provision.

15. Governance

The Panel recommended the strengthening of governance over investments, and providing more specific directions to defined contribution investments. They

recommended that sponsors should determine the investment choices to be offered to employees, but these should be chosen in a prudent manner; there should be good communication about the investment choices available; and members should be provided with information and projection tools in order to calculate the possible results and risks from these choices and their impact on the pension.

The Panel also recommended default enrolment of members when they become eligible to join the plan and default investment mix selection for members of Defined Contribution plans who fail to make their own selection. This appears to be a recommended best practice that works in the employee's interest.

Response to Recommendation #15

The Department agrees that governance rules should be strengthened and welcomes comments on these provisions. The Pension Review Panel recognized that default enrolments are often the best choice and these provisions will aid consumers in the longer term.

16. Safe Harbour Rules

The Panel found that "Safe Harbour" provisions should **not** be included in the regulations. This recommendation is contrary to those proposed by Gunderson and Wilson, who recommend that if an employer is going to want to be involved in a pension plan of any type, the risks should be mitigated :

Foster simplicity and transparency for DC plans by having a limited range of investment options for most members, and reduce risk with age-adjusted balanced portfolios that become more conservative as the member approaches retirement age (with safe-harbour protection for employers or groups who follow such procedures). (p. E-2)

In Nova Scotia, we want to encourage plans to develop, and broaden the participation of those involved in plan governance. This will mean that employees and unions are participating in oversight of DC plans as well as other types of plans. It may be difficult to find pension plan committee members and administrators if they are not offered safe harbour protection.

DC plans can be subject to litigation risk over such issues as investment returns, investment options and fees. However, those risks are being mitigated by such factors as member education, use of third parties for assistance and advice, and documentation of decisions and actions (Towers Perrin 2007, p.3, 5). The litigation risk could also be minimized by "safe harbour protection for plan administrators in setting a default investment option that meets certain criteria set out in regulation" (Finance 2009, p. 15; Robson 2008a). (p.3-21 Gunderson and Wilson)

The department recognizes that the litigation risk can cost a pension plan a lot of difficulty, and may deter people from serving as administrators and trustees.

Response to Recommendation #16

The Department recommends that default DC plans should be subject to good governance rules, and that when following prudent rules for investment that are appropriately reviewed on a periodic basis, there should be protection for plan administrators and committee members.

17. Governance Filing Rules

The Pension Review Panel wanted to open the doors on pension regulation and encourage informed consumer involvement in the governance of pension plans. This means that workers would have to have access to the governance plans used by the Administrator and reviewed by the Advisory Committee or trustees. To achieve this access, these plans would be filed with the Superintendent's office and would be shared with all on-line. This would ensure that pensioners, members and employer representatives all have access to the relevant information about plan governance.

Response to Recommendation #17

The Department agrees with the recommendation to have information on plan governance shared with all, so that retirees, members and other interested parties can share insights into the proper governance and accountability mechanisms in place with other plans. Some concerns have been expressed about "over regulation" with these filings, but best practices can be employed to ensure that the goal and intent of this recommendation is met, without undue burden on the regulator or the plan sponsor.

18. Advisory Committees:

The Pension Review Panel was impressed with the understanding and knowledge that existed where plans had a pension Advisory Committee involved the governance of pension plans. This is an excellent way to reduce concern and litigation, create realistic expectations, as well as involve retirees, employees, and experts in the oversight of the pension plan.

Response to Recommendation #18

The Department agrees with the recommendation that all plan sponsors should be encouraged to continue or create Advisory Committees.

19. Access to Information:

The Act already requires administrator to provide Advisory Committees with information, so this recommendation expands on what the committee is entitled to receive and ensures access. The CAPSA Model Law recommends including on a member's annual statement disclosure of solvency, contribution holidays, the right to access information, and the names of trustees or committee members acting as plan administrator, so this recommendation will be advanced to include those items as well.

Response to Recommendation #19

The Department agrees with the Panel's recommendation to ensure access to information by adding specific provisions in the legislation.

20. Access to Appeals:

Currently, the Superintendent may hold a reconsideration hearing of a proposed decision, following which she may change her proposed order, issue or decide not to issue a proposed order. Appeals of orders go to the Supreme Court. The lack of an independent appeal process is a concern. The Panel recommended that the Superintendent maintain her neutrality, and not become involved in the types of investments being made. They recommended that appeals of her decisions go to the Labour Relations Board.

Some stakeholders have indicated the Utility and Review Board would be a better alternative for review than the NSLRB, as it has experience dealing with actuarial reports and accountants' projections in insurance matters that come before it and staff with actuarial expertise. Adjudicators with expertise in pensions could be added to the board to hear these appeals. Hearings are only held once every two years on average in Nova Scotia so the cost and necessity of setting up a separate process is not advised. The UARB also has the ability to appoint consumer advocates for hearings, which may be useful to advocate for retirees as well as members of a pension plan in these hearings.

Response to Recommendation #20

The Department agrees with the Panel's recommendation to ensure access to an independent adjudicative board to determine issues related to pensions. The Department is recommending that these matters be heard by the UARB.

21. Exempt Plans for Connected Persons

The Panel recommended pension plans for the exclusive benefit of "Connected Persons", as defined by the federal *Income Tax Act*, should be exempt from regulation under the *Pension Benefits Act*. The Panel recommended that the Superintendent would not have to monitor plans established by business owners for their own benefit, called plans for connected persons. Owners do not have to file documents or reports with Superintendent, or comply with funding

requirements. Other jurisdictions such as BC, AB, QC and MB have some type of exemption for such plans.

Exemption from registration may mean that the pension benefits/funds lose creditor protection, spousal rights protection, and benefits of locking-in. A provision could be developed that would protect these plans for these issues, but prevent them from being formally monitored by the Superintendent, especially where there are no other members or employees impacted by these types of plans.

Response to Recommendation #21

The Department agrees with the Panel's recommendation to exempt these types of pension plans for connected persons.

22. Remove Acceptable Classes of Employees

The Panel recommended that the current list of acceptable classes should be removed from the legislation. Employers should be allowed to make their own decision on classes of employees, and benefit design for each (subject of course to any agreements arising from collective bargaining and to laws against discrimination that apply to other terms of compensation).

Response to Recommendation #22

The Department agrees with the Panel's recommendation to remove these lists from the legislation.

23. Develop a type of passport system for plans primarily administered outside of Nova Scotia.

The Panel recommended streamlining the administration around pensions, and the Department agrees that new ideas are worth exploring, especially where pensions are a relatively small but highly specialized component of public administration. Many provinces agree that there should be greater collaboration, and a provincially sponsored plan or extension of CPP may well promote the type of practical approaches that the Panel has recommended.

Response to Recommendation #23

The Department agrees with the intent of the Panel's recommendation which is to find convenient ways for members to interact with the regulator, and to look to ways to collaborate with other provinces and territories or the Federal Government on pension regulation.

24. Changes to the Grow In provisions.

The Panel recommended removing grow in provisions from the legislation, and was in favour of clearer terms in the pension plan to determine whether or not terminating employees receive eligibility for early retirement subsidies earlier than qualification rules would stipulate. Grow in benefits are often considered a “nice to have” but not necessarily a “need to have” benefit, especially when employers and employees share the cost of funding grow in benefits. Their future utility in the changing demographic landscape will be interesting to watch as we move towards 2016 and the anticipated shortage of workers.

Response to Recommendation #24

The Department agrees with the intent of the recommendation which is to remove the legislative wording related to grow in from the statute, and look to the wording in the pension plan itself to govern the funding and disbursement of grow in benefits.

25. Immediate Vesting.

The Panel was clear in its recommendations, but the de facto situation in Ontario appears that employers are making employees wait at least 2 years before they can participate in the pension plan so there are ways of working around the turnover issue in the early stages of work. The comments of Gunderson were noted earlier, who suggested phasing in vesting over three years. This is something the Department would like to have more feedback to assess the impact in the workplace.

Response to Recommendation #25

The Department agrees with the concept of immediate vesting, but is open to further comments on suggestions that have been made after the Panel’s report, that phased in vesting over 3 years would be easier for employers and sponsors who tend to absorb the administrative costs associated with early vesting. In Ontario there has been some comment that employers can get around the immediate vesting rule by simply not allowing new employees to join the plan until after two years.

26. Unlocking Rules for Defined Contribution Plans.

The Panel has helpfully looked at the rules for unlocking defined contribution plans, and recognized that it should be far simpler to unlock DC plans. The upheaval that many Canadians who lose their jobs have to face in today’s economy is considerable, especially for those who are laid-off in the latter part of their careers.

Response to Recommendation #26

The Department welcomes comments on suggestions for a more structured system associated with defined contribution withdrawals.

27. Dealing with Financial Hardship Rules and other unlocking of pension issues.

The Panel recommended removing unlocking for financial hardship issues from the legislation.

The Panel felt that no other changes should be made to the current regime for unlocking for Defined Benefit plans. However, at time of retirement the regulatory restriction would be that up to half of the commuted value could be used for non-traditional retirement income options such as a RRIF or LIF. This would allow the member to integrate with his or her particular circumstances—for example bridging to age 65 .The plan could have stricter rules if it chooses to, but would be responsible for administering them.

Response to Recommendation #27

The Department recognizes that financial hardship provisions have been used more frequently in the past two years. Any comments or suggestions for this recommendation are welcomed.

28. Phased Retirement Provisions

The Panel recommended that Nova Scotia legislation should permit phased retirement—that is, it should not prevent the accumulation of new benefits while receiving a pension. This is a worker retention strategy, which can work to encourage attachment to the workplace, especially with a declining labour supply.

It recommended that Sponsors should be able to make their own rules about whether or how they offer phased retirement benefits. The Panel also recommended that postponed retirement options and benefits should be dealt with under Phased Retirement provisions in the plan text.

Response to Recommendation #28

The Government has passed Phased Retirement provisions and is working on regulations to implement the legislation. Phased retirement has been available in the United Kingdom since April 2006, and it has allowed greater flexibility for those who want to work part-time and access part of their pension. In the UK, it is subject to the employer adopting a rule allowing this. Employers are not obligated to adopt a rule, because some may have plans to wind up the pension, or may wish to merge with another type of pension plan. They may no longer need all of the worker's skills, or only wish to continue with some operations. This is why it

remains a privilege and not a right under the UK rules. In Canada, phased retirement is allowed at the Federal level, and in Quebec and Alberta, however, there is not a lot of actuarial information available on how much it costs, and how it is being accommodated in workplaces. In these jurisdictions, it remains up to the employer as to whether to allow phased retirement in the workplace.

In times of economic uncertainty, the phased option may not work for every company, especially those utilizing the four day reduced work option under the Employment Insurance rules. The department welcomes further comments on the implementation of phased retirement.

29. Promotion of Pensions and Support for Advisory Committees

The Panel called for better promotion of pension plans and support for Advisory Committees, finding that Government should encourage more Defined Benefit plans through more flexible legislation and regulation and through promotional activities. This promotion should be separate from the Superintendent's office and should include the promotion of a province-wide plan; encouraging employees to form Advisory Committees; and providing training materials and programs in support of Advisory Committees.

Response to Recommendation #29

This recommendation coincides with the Department's commitment to learning, and to improve financial literacy. The department may not create a separate Promotion Division, but will develop a plan to promote pensions and support the Advisory Committees, and support better communication to employers, employees and retirees.

30. New Pension Plan

The Panel recognized the need for greater pension plan coverage for Nova Scotians, and recommended a province-wide plan. Since then the Federal Government, the Premiers and the Ministers of Finance have been working collectively on many of the options that were raised in the Pension Papers presented to Ministers in December 2009.

Response to Recommendation #30

The Nova Scotia Government is currently participating with our Federal, provincial and territorial counterparts to examine pension coverage and retirement income adequacy of Canadians. Nova Scotia will continue to push forward with our counterparts for solutions that will benefit all Canadians in the years ahead.

APPENDIX A

Note this is an abridged summary- the NS Pension Review Panel's Discussion Paper, Interim Report and Final Report of the Panel can be found on our website at <http://gov.ns.ca/lwd/pensionreview/default.asp>.

No	Summary of Recommendation	Proposed Action/Comments
1.	Create an environment where pension promises will be fulfilled by ensuring complete transparency for all information affecting an employees plan.	Agree: Amend the Act by adding a purpose clause to section 1.
2.	Clear pension legislation goals by developing a list of over arching goals as follows: (1) To maximize the likelihood that pension promises are met by: (2) To ensure that employees have appropriate access to information about their individual benefits; (3) To provide transparency of information about all aspects of pension plans to members; and (4) To promote and facilitate the implementation and continuation of pension plans	Agree: Amend the Act as noted in section 1. Note section 35 should be expanded as well.
3.	List of legislation to be avoided: (1) Establishing minimal acceptable levels of benefit (2) Enforcing equity between plan members (beyond that already applicable to other forms of compensation) (3) Favoring one form of pension over others (4) Preventing new forms of pensions from being developed (5) Increasing regulatory burden either quantitatively or qualitatively (6) Discouraging the establishment or continuation of pension plans by unnecessary regulatory burden.	Agree: Add a section to the Interpretation section of the act that would espouse these recommendations.
4.	The bias in interpreting the Act and regulations should be permissive, not restrictive. If it is not forbidden and does not contradict the spirit of the Act and Regulations it should be permitted.	Agree: Add a section (a) Nothing in this section restricts the Superintendent from accepting new forms of pension plans or from exercising broad discretion. (b) Nothing in the Act shall be construed as restricting an administrator from instituting changes or additions to a pension plan.
5.	Jointly Sponsored Pension Plans, either single or multi-employer, should be eligible for registration and regulation as a distinct type of plan.	Agree: Amend the Act to recognize jointly sponsored plans and those that may be formed by business associations, unions, professions and sector councils.
6.	Target Benefit Plans should: (a) Be available for single employer or multiple-employer groups. (Specified Multi-Employer Pension Plans are an example of this format.); (b) Be governed by a Joint Trusteeship of the plan; (c) Require the employer(s) to pay at least 50% of the total contributions. (d) Be required to use all contributions for provision of benefits and plan expenses.	Agree in Principle: The Department agrees that new options should be allowed under the Act, but would like more feedback from employers and employees on whether Target Benefit Plans should be permitted.

7.	Legislation should be flexible to accommodate new plan designs and funding methods through subsequent regulations.	Agree: Changes should be made to the Act to recognize new types of plans and accommodate changes to funding and design through regulation.
8.	<p>The present solvency funding and going concern valuations should no longer be required for regulatory purposes. In their place an accrued benefit measurement should be required as the minimum funding standard. Specifically:</p> <p>(a) Tests of funding adequacy must value all promises made. Fully fund promises on wind-up.</p> <p>(b) No benefit improvements should be allowed if the plan is in deficit, unless they:</p> <p>(1) first pay off the deficit in full; or</p> <p>(2) pre-pay for the benefit improvement in full; or</p> <p>(3) they may pay for the improvement in annual installments, so long as the improvement is considered a hope, rather than a promise, until it is fully funded. In other words, the members must be clearly advised that the benefit improvement will not become a promised benefit until it is fully funded.</p> <p>(4) Different rules apply for Target Benefit Plans, including SMEPPs, as described in the next section on Determining and Responding to Deficits.</p> <p>(e) All valuations must be filed within six months of the effective date of the valuation, with provisions for fines if the timeline is not met.</p>	Comments: The Department agrees that changes to current funding requirements are needed to help employers and members understand the risks associated with the plan. It is concerned that a new standard may negatively impact individual plans. This recommendation has generated the most concern from employers and employees, and represents somewhat of a challenge in terms of harmonization with other jurisdictions. For the near-public sector, the Department recognizes the merit in different funding rules for defined benefit plans based on the governance, funding arrangements and risk characteristics of such plans. The Department welcomes further feedback on this recommendation.
9.	<p>The following rules ensuring minimum funding should apply equally to all plans:</p> <p>(a) All plans should have an amortization period for deficits over a maximum of ten years, which, would apply to sponsors from the next valuation date onwards.</p> <p>(b) The financial risks associated with Defined Benefit Pension plans should be mitigated as follows:</p> <p>(i) A “collar” of 5% should be provided. If a plan is in deficit of 5% or less, then the plan may make payments towards the deficit, but is not required to do so. Any deficits over the 5% collar must be amortized.</p> <p>(ii) Actuarial valuations must occur at least once every three years.</p> <p>(iii) Plans must perform a test each year as of the anniversary of the most recent full valuation. The purpose of these tests would be to provide information on the health of the plan.</p>	<p>Agree: Virtually all the provincial Pension reports have recommended moving to a 10 year amortization period, an increase from the existing 5 years. The Department believes this recommendation is sound, even though some would suggest that this exposes members to potential under funding.</p> <p>The 5% collar recommendation for DB plans is an attempt to provide an incentive to employers to continue to pay into the plan with less risk of loss and is supported as an incentive to achieve full funding.</p>
10.	<p>The uncertainty of surplus use and ownership should be mitigated in the following manner:</p> <p>(a) As with deficits, surplus should be amortized over a minimum of ten years, with interest. Amortization would be through prospective reductions in minimum funding requirements.</p> <p>(b) As with deficits, there should be a 5% collar for surplus. Any surplus up to 105% minimum funding cannot be amortized. Any surplus above the 105% could be amortized.</p> <p>(c) With respect to active plans, the administrator can determine who is entitled to the benefits of any surplus, subject to plan rules, and the impact of collective</p>	<p>Agree in Principle: Many find the discussion of a surplus a moot point in today’s economy.</p> <p>The Ontario report suggested contribution holidays for employers who had funded between 105% and 125% and allowing sponsors to withdraw surplus from an ongoing plan funded at more than 125%. The report develops a very definite formula for splitting the surplus at various points in time.</p> <p>The NS Panel recommended mitigating the uncertainty around use and ownership of</p>

	<p>bargaining. But the result of any choice must be that the sponsoring employer(s) has paid at least 50% of the net contributions over the previous ten years.</p> <p>(d) In the case of plan wind-up cash may be withdrawn only after all obligations have been fully met, or in rare cases where the surplus is greater than the present value of ten years worth of contributions (see (f) below).</p> <p>(e) In the case of Defined Benefit plans, those plans that are above the 105% collar may use the surplus to improve benefits. However, the improvement of benefits should not bring the plan below 100%.</p> <p>(f) Any time the surplus reaches a level greater than the present value of ten years worth of contributions, the surplus above that level must be removed by a cash distribution or improvement of benefits. However, any transaction is subject to the requirement that the sponsoring employer(s) has paid at least 50% of the net contributions over the previous ten years.</p>	<p>surpluses. The Department supports measures that would encourage new pensions and welcomes comments on how the surplus issue is best resolved, particularly on wind up.</p>
11.	<p>Ancillary Benefits:</p> <p>(a) They should be treated like all other benefits, and if they are promised, they should be paid for and sponsors should not be able to have them removed retroactively.</p> <p>(b) In the case of disability benefits and benefits payable as a result of the member's death before retirement in excess of the required amount (according to the current section 56 of the Act), subject to collective bargaining if applicable, sponsors may reduce or remove them, but only after five years notice to members.</p> <p>(c) Subsection (f) under Section 48(1) describes "postponed retirement options and benefits in excess of those referred to in subsection (4) of Section 41" as ancillary benefits. Given that the Panel is recommending that Phased Retirement be permitted, this benefit should be removed from the Ancillary Benefit section of the Act and should be dealt with under Phased Retirement provisions.</p> <p>(d) With respect to all other benefits mentioned under section 48(1), if they are promised benefits under the plan, then these benefits can only be removed or reduced for future accruals, subject to collective bargaining where applicable.</p>	<p>Agree: The Department agrees that the ancillary benefits should be like other benefits. The Pension Review Panel included this recommendation in the Final Report but it was not considered in the Interim Paper. Any comments on how to deal with ancillary benefits are welcome.</p>
12.	<p>Funding Transition Rules: <u>Responding to Market Losses in 2008</u> For many plans the new regime will represent an easing of minimum funding requirements compared with the solvency standards in place today—both because the assumptions are less onerous and because deficit amortization is extended from five to ten years. Many plans will be under stress because of market losses during 2008. But many tools are available to them to stretch out the response time. Under existing legislation they can do an unscheduled valuation as at, say, June of 2008, in which case the first valuation under the new rules will not occur until mid 2011. If markets have not recovered by then it will clearly be time for action on deficits, which would not be scheduled for completion until</p>	<p>Agree: The Department has implemented this recommendation for Market Losses in 2008 through regulations passed in October 2009.</p> <p>The Department would note that other temporary funding relief measures can also be provided through regulation to help plans cope with economic changes and transitional matters. Any comments on funding transition rules are welcome.</p>

	<p>2021. The ten year period is consistent with that offered by other jurisdictions in recognition of market circumstances. We recommend that the new rules should be effective no earlier than the beginning of 2010 but do not recommend any further relief from funding obligations on account of market conditions.</p>	
13.	<p>Partial Wind-ups:</p> <p>(a) The current section on partial wind-ups should be eliminated from the legislation.</p> <p>(b) The legislation should indicate that upon termination, whether one individual or a group, the member(s) should be able to take the commuted value with him/her, calculated on the same basis as the minimum funding standard. If the withdrawal occurs while the plan is in deficit, the sponsor will be responsible for making up the deficit that was associated with the departing employee(s). This payment must be made within one year of departure, but payment is not required if the total arising in a year is less than 1% of liabilities.</p> <p>(c) No surplus distribution is required on termination of individuals or groups.</p>	<p>Agree: The Panel recommended the elimination of the current requirements for Partial wind-ups and the elimination of the surplus distribution issue. This eliminates the associated administrative cost burden for partial wind-ups. The Department supports measures that will speed up payouts and make partial wind ups easier, recognizing that there is a trade off here. Any comments on funding transition rules are welcome.</p>
14.	<p>If an original plan is closed to new members and there are no new accruals, any surplus in an original plan should be transferable to a new plan according to the surplus rules that are noted in this report.</p>	<p>Agree: The Panel is recommending a legislative mechanism that would allow transfers to a new plan. The recommendation appears to support the SCC decision in the <i>Kerry</i> case, and is a useful mechanism to avoid prolonged legal debate over prohibited transfers. The Department welcomes further comment on this provision.</p>
15.	<p>The governance process for investments should be strengthened and the specific investment limits be removed from the regulations as follows:</p> <p>(a) Schedule I to the Regulations should be continued and expanded.</p> <p>(b) The expansion of Schedule I should include a separate section on the investment of Defined Contribution plans and other plans where the member is involved in the decision process which will affect the investment results for his/her own pension and thereby the adequacy of pension income. Sponsors should determine the investment choices to be offered to employees, keeping in mind the following requirements:</p> <p>(1) The options offered to employees by the sponsor should be chosen prudently;</p> <p>(2) There should be good communication to the members about the investment choices available;</p> <p>(3) The member should be provided with information and projection tools in order to calculate the possible results and risks from various choices and the effect on his/her ultimate pension.</p> <p>Legislation should permit a plan to require default enrolment of members when they become eligible to join the plan and default investment mix selection for members of Defined Contribution plans who fail to make their own selection.</p> <p>(c)Section III to the Regulations should be removed.</p>	<p>Agree: The Department agrees that governance rules should be strengthened and welcomes comments on these provisions.</p>

16.	<p>“Safe Harbour” provisions should not be included in the regulations.</p>	<p>Comments: Since the Panel’s report, Gunderson and Wilson have commented favourably on the addition of safe harbour rules as ways of preventing litigation. The Department recommends that default DC plans should be subject to good governance rules, and that when following prudent rules for investment that are appropriately reviewed on a periodic basis, there should be “safe harbour” protection for plan administrators and committee members. Further comment is sought on this recommendation, especially from those who would view this as an incentive to create new pension plans.</p>
17.	<p>In order to support the development of prudent management of pension plans it is recommended that:</p> <p>(a) All pension plans must file with the Superintendent of Pensions a copy of their Governance Plan which has been adopted by the Administrator and circulated to the Advisory Committee, Union, or employees, as appropriate.</p> <p>(b) The governance policy shall speak to issues including:</p> <ul style="list-style-type: none"> (i) governance objectives (ii) roles and responsibilities (iii) performance measures (iv) knowledge and skills (v) access to information (vi) risk management (vii) oversight and compliance (viii) transparency and accountability (ix) code of conduct and conflict of interest (x) governance review (xi) fiduciary responsibility 	<p>Agree: This recommendation supports and incorporates existing governance guidelines developed by CAPSA into the legislation. The Department accepts this recommendation as an appropriate measure to inform members of the health and status of the plan, as well as inform them about the performance of the participants who have decision making authority. These types of plans help to assess the risk management practices of the pension administrators, and are important tools for determining if different funding rules should apply to defined benefit plans, based on governance, funding and risk.</p>
18.	<p>The existing right for employees to create Advisory Committees should be continued and plan sponsors should be encouraged to create Advisory Committees where they do not already exist. Advisory Committees should be provided with the following rights, training and support:</p> <ul style="list-style-type: none"> (a) access, simultaneously, to any documents that the sponsor files with the Superintendent. (b) reasonable access to plan actuaries, investment managers and other professionals, for explanations of plan documents filed with the Superintendent (c) members should be representative of the members of the plan, and include active members and at least one retired member. (d) selection of the Advisory Committee shall depend on whether the plan is in a union or non-union environment. (e) members need orientation and training, provided by the sponsor. 	<p>Agree: An active and engaged advisory committee can play a key role in a successful well-managed pension plan and ensuring that information gets out to the members. The CAPSA Model Law recommends including on a member’s annual statement disclosure of solvency, contribution holidays, the right to access information, and the names of trustees or committee members acting as plan administrator, so this recommendation will be advanced to include those items as well.</p>
19.	<p>Access to Information:</p> <ul style="list-style-type: none"> (a) Every formal report or plan document that a sponsor/administrator files with the Superintendent of Pensions should be provided simultaneously to Advisory Committees, and to members via a place where the 	<p>Agree: This recommendation is similar to the previous recommendation, and ensures access to key documents.</p>

	<p>information can be easily accessed in both paper and electronic format.</p> <p>(b) The foregoing applies to all plans regardless of design or governance structure.</p>	
20.	<p>The role of the regulator of pension plans under the PBA should be clarified and modified as follows:</p> <p>(a) Regulators should be neutral as to the format of retirement plans.</p> <p>(b) Regulators should not attempt to regulate the adequacy of retirement income.</p> <p>(c) The legislation should be changed to require that appeals from the Superintendent's decisions be made to Nova Scotia Labour Relations Board ("NSLRB"). The NSLRB would have jurisdiction to consider all orders decided by the Superintendent of Pensions without deference to the Superintendent and substitute any decision they think is proper. Any decision of the NSLRB would be subject to judicial review to the Supreme Court.</p>	<p>Agree: Currently, the Superintendent may hold a reconsideration hearing of a proposed decision, following which she may then change a proposed order, issue or decide not to issue her proposed order. The current appeal process is to the Supreme Court. The lack of an independent appeal process is a concern.</p> <p>Some stakeholders have indicated the Utility and Review Board would be a better alternative for review than the NSLRB, as it has experience dealing with actuarial reports and projections in insurance matters. The UARB has the power to appoint a Consumer Advocate, which may be helpful in representing the issues of retirees. Adjudicators with expertise in pensions could be added to the board to hear these appeals. Comments on this issue are appreciated.</p>
21.	<p>Pension plans for the exclusive benefit of "Connected Persons", as defined by the federal <i>Income Tax Act</i>, should be exempt from regulation under the <i>Pension Benefits Act</i>.</p>	<p>Agree: The Panel recommended that the Superintendent would not have to monitor plans established by business owners for their own benefit, called plans for connected persons. Owners do not have to file documents or reports with Superintendent, or comply with funding requirements. Other jurisdictions such as BC, AB, QC and MB have some type of exemption for such plans.</p> <p>Exemption from registration may mean that the pension benefits/funds lose creditor protection, spousal rights protection, and the benefits of locking-in. A provision could be developed that would protect these plans for these issues only but prevent them from being formally monitored for solvency.</p>
22.	<p>The current list of acceptable classes should be removed from the legislation. Employers should be allowed to make their own decision on classes of employees, and benefit design for each (subject of course to any agreements arising from collective bargaining and to laws against discrimination that apply to other terms of compensation).</p>	<p>Agree: This recommendation would allow employers to determine who can participate in a pension plan, subject to collective agreements, and laws regarding discrimination.</p>
23.	<p>The Nova Scotia legislation should provide that when a plan is administered outside Nova Scotia, and has a majority of members outside Nova Scotia, the province where the plan is administered can regulate Nova Scotia employees in accordance with the rules in the province where the plan is administered. The Panel does not recommend that Nova Scotia insist on symmetry before instituting this type of passport system.</p>	<p>Agree in Principle: The Pension Panel recognized the difficulties associated with too much regulation, and wanted to streamline the legislative framework as much as possible. This may be a challenge with other jurisdictions, however, the point is well taken that the provinces should work to avoid duplication in pension administration.</p>
24.	<p>The current PBA provisions for "grow-in" benefits under</p>	<p>Agree in Principle: The Panel has charted a</p>

	<p>section 79(1) (a), (b), and (c) should be removed from the Act and the consequential treatment of these benefits will be as follows:</p> <p>(a) The plan terms alone will determine whether or not terminating employees receive eligibility for early retirement subsidies earlier than qualification rules would stipulate.</p> <p>(b) If a plan provides for grow-in rights to enhanced early retirement benefits, these must be included in the assumptions used in the minimum funding calculation, including the valuation of liabilities on plan wind-up.</p> <p>(c) These benefits should receive equal treatment in the case of wind-ups of under-funded plans. That is, if these benefits are included in a plan, on wind-up they should have the same priority of distribution as all other benefits in the plan.</p> <p>(d) Suitable provisions should be made for protecting continuity for those unions that want to see the grow-in benefit continued.</p>	<p>course here that will remove “grow in” from the legislation, and allow plans to be adjusted. This type of change would in part be tempered by the type of funding formula used as noted above.</p>
25.	<p>Vesting in all plans should be immediate.</p>	<p>Comments: The Department agrees in principle that pension plans would be better off, and employees would be better off if there was immediate vesting, but this could result in increased administrative costs, as employee turnover in the first 2 years may be high. The suggestion of Gunderson and Wilson is to allow for phased vesting over a three year period. In Ontario, immediate vesting has been avoided by employers simply making the employees wait two years before they can join the pension. Further comments on this recommendation are welcome.</p>
26.	<p>With respect to unlocking of Defined Contribution plans the following rules should apply:</p> <p>(a) Pension funds should remain locked in so long as an individual is an active member of the plan;</p> <p>(b) It should be optional as to whether a plan permit unlocking;</p> <p>(c) If a plan permits unlocking, individuals who are at least age 50 should be permitted to unlock either 25% or 50% of their entitlements, on a one-time basis, at or after termination of employment. The unlocked amount could be transferred to a non-locked in RRSP, while the locked in portion could be transferred to a LIRA or locked-in RRSP.</p> <p>(d) If a plan is silent on unlocking, then 50% unlocking at age 50 or over at the member’s election should be the default.</p> <p>(e) For transition purposes, individuals subject to the current legislation who are 50 or over at the time of the new legislation is enacted should be “grandfathered” under that rule regardless of the option selected for the plan going forward;</p> <p>(f) The only exception to any of the above rules is that, for Defined Contribution plans, after age 60, members can annuitize their accumulated contributions in whole or in part at any time that they want.</p>	<p>Agree in Principle: The Department agrees in principle with the Panel’s thinking on unlocking, subject to the financial hardship rules. Monies for retirement are given special tax treatment, and should not be withdrawn except under very limited circumstances.</p> <p>Further comments on this recommendation are welcome, especially comments on the annuitization of benefits after age 60.</p>

27.	<p>With respect to Defined Benefit plans the following rules restricting unlocking should be as follows:</p> <ul style="list-style-type: none"> (a) Unlocking for financial hardship issues should be removed from the legislation. (b) No other changes should be made to the current regime for unlocking for Defined Benefit plans. However, at time of retirement the regulatory restriction would be that up to half of the commuted value could be used for non-traditional retirement income options such as a RRIF or LIF. This would allow the member to integrate with his or her particular circumstances—for example bridging to age 65 .The plan could have stricter rules if it chooses to, but would be responsible for administering them. 	<p>Comments: The Department is concerned that removing the unlocking provisions for hardship issues will be very difficult for Nova Scotians in a time of recession. These funds create an option for Nova Scotians who may be facing mortgage foreclosure, financial difficulties due to health concerns, or have a drop in their income before they can retire. The Federal Government and the provinces of Ontario and Alberta allow unlocking. The Department would like more feedback on this issue.</p>
28.	<p>Phased Retirement provisions:</p> <ul style="list-style-type: none"> (a) Nova Scotia legislation should permit phased retirement—that is, it should not prevent the accumulation of new benefits while receiving a pension. (b) Sponsors should be able to make their own rules about whether or how they offer phased retirement benefits. (c) Postponed retirement options and benefits should be dealt with under Phased Retirement provisions in the plan text. 	<p>Agree: The Government has implemented this recommendation by introducing Bill 48 in the Fall Session of the Legislature, 2009. The Department would appreciate any further comments or concerns regarding the implementation of phased retirements.</p>
29.	<p>Promotion of plans and support for Advisory Committees:</p> <ul style="list-style-type: none"> (a) Government should encourage more Defined Benefit plans through more flexible legislation and regulation and through promotional activities. (b) Promotion of pension plans should be a function of the Department of Labour and Workforce Development, but separate from the Superintendent's Office. (c) The mandate of the Promotion Division should include: <ul style="list-style-type: none"> (a) Promotion of the province-wide plan; (b) Encouraging employees to form Advisory Committees; and (c) Providing training materials and programs in support of Advisory Committees. 	<p>Agree: This recommendation coincides with the Department's commitment to learning, and to improve financial literacy. The department may not create a separate Promotion Division, but will develop a plan to promote pensions and support the Advisory Committees, and support better communication to employers, employees and retirees.</p>
30.	<p>Creation & administration of a province-wide pension plan:</p> <ul style="list-style-type: none"> a) Nova Scotia should support the establishment of a pension plan available to all employers and employees in the province, which should be administered by an independent agency. (b) Self-employed persons should be allowed to participate in the plan. Likewise, employees of employers who do not offer pension plans should be entitled to participate. (c) The province wide plan should allow individuals to transfer the commuted value of their pensions to the new province wide plan. This option would also benefit employees whose employer discontinues the pension 	<p>Agree: The department agrees that a province-wide plan is desirable, however, a national plan may be a better option for a small province like NS. The Nova Scotia Government is currently participating with our Federal, provincial and territorial counterparts to examine pension coverage and retirement income adequacy of Canadians. Nova Scotia will continue to push forward with our counterparts for solutions that will benefit all Canadians in the years ahead.</p>

<p>plan, or ceases to continue in business.</p> <p>(d) Participation in the province wide plan would not be mandatory, but employers with at least 50 employees, other than those employers who currently have a pension plan, would be required to make a conscious choice to either participate or opt out.</p> <p>(e) The types of plans available under the provincial plan could include a Target Benefit plan and Defined Contribution plan options for employers of any size in the province. Interested self-employed individuals would be offered a Defined Contribution plan.</p> <p>(f) A particular benefit and funding version could be constructed for like employer clusters, like municipalities, or Information Technology firms. It would not be mandatory.</p> <p>(g) If the Superintendent finds that a plan is poorly managed, he/she should have the power to transfer the assets and management of it to one of the plans offered under the province wide plan.</p> <p>(h) The province wide plan would be a possible destination for “orphan” accumulations disbursed by plans being wound down.</p> <p>(i) The provincial agency would be responsible for the pooling of administration and investments, but would not be responsible for the funding risks, not for any costs of administration or investment management. This plan would be subject to the provisions of the <i>Pension Benefits Act</i> and is not a “plan of the Province of Nova Scotia and thereby exempted from the Act”.</p>	
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We Welcome Your Comments:

Members of the public are invited to submit comments on these recommendations. Please submit your written comments in a letter or an e-mail to:

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Policy, Planning and Professional Services Branch
Nova Scotia Labour and Workforce Development
 PO Box 697
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 web: <http://www.gov.ns.ca/lwd/policy>
Deadline for comments: April 15, 2010