

CHOICE OF SUPERANNUATION FUND REGULATIONS

CONSULTATION PAPER

November 2004

Background

The *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004* (the Choice of Fund Act) gives effect to the Government's policy to give employees the right to choose which superannuation fund their compulsory superannuation contributions are paid into. The measure takes effect from 1 July 2005.

Employers can meet their obligations under the legislation by entering into a certified agreement or an Australian Workplace Agreement with their employees. Contributions made under a state award or state industrial agreement also meet an employer's choice of fund obligations.

There are a number of outstanding matters to be prescribed in the regulations. These include:

- The content of the standard choice form.
- The information an employee choosing a fund must give their employer.
- The minimum level of life insurance to be offered by the default fund.
- The exceptions to the general rule prohibiting a trustee or an associate from providing a benefit to an employer who chooses their fund as the default fund.

Treasury is seeking views and suggestions from the community to assist in the development of these regulations. This paper outlines possible proposals for regulations, and identifies particular areas for comment.

All interested parties are invited to make submissions and comment on this paper. Treasury will accept written submissions until 30 November 2004. Please forward these to:

General Manager
Superannuation, Retirement and Savings Division
Treasury
Langton Crescent
PARKES ACT 2600

Alternatively, send submissions in electronic form to:

superannuation@treasury.gov.au

Minimum life insurance cover

Under paragraph 32C(2)(c) of the Choice of Fund Act, if employees do not choose a fund employers must make contributions to a fund that satisfies the requirement to offer a minimum level of life insurance cover. The fund or Retirement Savings Account may provide other insurance, such as disability insurance.

Regulations will prescribe the rules in relation to the minimum level of life insurance. It is not intended that these regulations regulate the level of insurance premiums.

Circumstances may exist where employers should be exempt from making contributions to funds which meet the minimum level of insurance requirement. For example:

- it may be appropriate to exempt an employer who must make contributions to an award fund which does not offer the minimum level of insurance. Without such an exemption, an employer might have to choose between meeting their award obligations and meeting their choice of fund obligations.
- it may be appropriate to exempt an employer who currently makes contributions to a superannuation fund which does not offer the minimum level of life insurance cover. Without such an exemption, an employer would have to choose a new fund which satisfied the insurance requirements. This would result in employees having multiple funds, even though they remained with the same employer. This would also result in additional costs for employers.
- it may be appropriate to exempt an employer if it is not possible to find insurance cover for a particular employee who works in a high-risk occupation.

In developing these regulations:

- *what should be the minimum level of insurance cover?*
- *should the insurance cover be mandatory for an employee or should it be provided on an opt-out basis?*
- *when should the insurance cover commence?*
- *when should employers be exempt from choosing a fund that meets the requirement to offer a minimum level of life insurance?*

Standard Choice Form

Employers will give employees a standard choice form within 28 days of the employee commencing employment. Employers will provide the form to existing employees by 29 July 2005. Treasury is seeking comments on what messages to include in the standard choice form.

The standard choice form will provide basic information for employees about choice of funds, and is expected to be no longer than three pages.

The standard choice form will highlight matters employees should consider before they select a fund. For example, employees will need to consider the impact that choosing a new fund may have on their existing insurance benefits, the level of fees and charges for the services offered and the type of investments the fund offers.

Although most of the information will be contained in general statements, employers will need to include specific information. For example, employers will need to nominate the name of the fund into which they will pay contributions if the employee does not choose a fund.

Employees will also need to be notified if their decision to choose a new fund may decrease the amount of employer superannuation contributions made on their behalf. This may occur where an employer currently contributes more than the mandated superannuation guarantee amount of 9 per cent, but will only contribute the minimum 9 per cent, if their employee chooses a new fund.

Employers will also have to provide additional information to employees who are defined benefit members of a defined benefit fund or scheme. This information will include the effect of a decision to choose another fund on the person's benefits within that fund or scheme. For example, the information may include whether the benefits will be transferred to the new fund, how remaining benefits in the fund will be treated (for example, increased by investment returns), the impact on any unvested benefits and whether they can rejoin the fund or scheme.

Employers will also have to notify defined-benefit employees if the rate of contributions paid to their chosen fund is lower than the equivalent amount paid to the defined benefit fund or scheme.

What are the main issues employees need to consider, before choosing a superannuation fund, that the standard choice form should highlight?

What additional information should employers give employees on the standard choice form?

What information do employees who are defined benefit members need before they make a choice?

Information from employees to employers

Employees must provide employers with sufficient information about their chosen fund so employers can contribute to that fund. Where an employee does not provide this information, an employer may refuse to accept the employee's choice.

Under section 32FA of the Choice of Fund Act employees must provide two types of information to employers. They must give the contact details of their chosen fund and written evidence the fund will accept their employer's contributions on their behalf. The latter may take the form of a letter from the fund trustee.

This section also requires the employee to provide any other prescribed information. This could include information such as:

- the person's account details in the fund (name and number)
- other specific fund identifiers, such as an Australian Business Number
- evidence the fund is a complying fund
- any requirements the fund may have for the employer to become a 'participating employer'.

This information ensures the employer has all the necessary information to contribute to the employee's chosen fund.

The standard choice form may have an attachment for this information which the employee can complete and provide to the employer when choosing a fund.

What information do employers need about a chosen fund before they make contributions to the fund?

Exemptions where a trustee may provide benefits to employers

Section 68A of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) prohibits the trustee of a superannuation fund, or an associate of the trustee, from providing or withholding benefits to a person on the basis that one or more of their employees becomes a member of the superannuation fund.

For example, the trustee of a superannuation fund will not be able to offer an employer an inducement, such as a free holiday, to encourage that employer to choose the trustee's fund as the default fund.

However, the legislation provides that regulations may prescribe certain exemptions from this prohibition. Some possible exemptions include:

- employers may be offered a 'clearing house' service if a particular fund is their default fund. A 'clearing house' service allows employers to make contributions to multiple funds quickly and efficiently at little or no additional cost. Employers will make one payment to the clearing house which then distributes the contributions to employees' chosen funds on the employers' behalf.
- some financial institutions also offer discounted business loans to employers who are members of a particular superannuation fund. As this person technically may be an employee of the business, section 68A may prohibit these loans. Therefore, these loans may need to be exempt from section 68A provided that only the business owner is required to be a member of the superannuation fund.

Do the trustees of superannuation funds provide other benefits to employers which should be eligible exemptions under section 68A of the SIS Act?