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No. 31 2002–03

Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 31 2002–03

Superannuation Legislation Amendment (Choice of
Superannuation Funds) Bill 2002

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29 August 2002

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Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002

Date Introduced: 27 June 2002

House: House of Representatives

Portfolio: Treasury

Commencement: 1 July 2004

Purpose

To provide employees with a greater choice in the selection of employer sponsored superannuation provider by amending the *Superannuation Guarantee (Administration) Act 1992*.

Background

Proposed reforms designed to provide people with greater choice of superannuation fund have been the subject of public debate since 1996. This section provides a history of the public debate on these reforms.

Current Arrangements

Federal income tax laws provide numerous incentives to encourage employers and employees to provide for employees' retirement by contributing to superannuation funds. The incentives include:

- employer superannuation contributions (for the benefit of employees) being deductible to the employer
- superannuation fund earnings and capital gains being taxed at concessional rates
- employee (or undeducted) superannuation contributions being exempt from tax
- superannuation benefits taken at retirement age being taxed at concessional rates

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- an 18 per cent rebate on spouse contributions of up to \$3000 per annum to the superannuation fund of a spouse who has an annual income up to \$10 800 annum
- a 15 per cent tax rebate on the assessable part of an annuity or pension payment, where that annuity or pension was purchased from a taxed superannuation, and
- low income employees being entitled to a tax rebate of up to \$100 for personal contributions made to a superannuation fund.

Taxation concessions are provided at a cost to Government revenue. It is estimated that the concessional tax treatment of superannuation cost \$10.3 billion in 2002-03.¹

In addition to using tax concessions (a "carrot"), Federal and State legislation compels employers (ie. "uses a stick") to make provision for employees' retirement by making them contribute to superannuation funds on behalf of their employees.² Compulsion is imposed by industrial awards (Federal and State), and the Federal Superannuation Guarantee Charge (SGC) scheme.

Due to a combination of Federal and State legislation, it is not common for employees to be able to choose the fund into which contributions are paid. In practice, a range of circumstances exists, depending of the jurisdiction of the law imposing the obligation on the employer. For example, some employers may offer a choice of fund, even though they are under no obligation (Federal or State) to do so. For some employers, the relevant superannuation fund is specified in an award (either Federal or State), another industrial instrument (such as a certified agreement), or legislation. Some Federal and State awards may enable employers to pay into one of a number of funds, ultimately leaving the choice of fund to the employer. In some States, employees can exercise a form of choice of fund in respect of contributions made under an industrial award. The obligations under Federal and State laws are discussed in the following sections.

Federal Law

At the Federal level, compulsory employer superannuation can exist under either an industrial award or under the SGC scheme.

The distributions of the contributions vary under the two schemes. Generally, award superannuation is contributed to an industry fund, however some industrial awards offer members and employers a choice of fund. Industry funds have equal employer and union representation in the board of trustees. Under the SGC scheme (where the employer makes the contribution voluntarily rather than paying the SGC, as is the normal case), the employer has the choice of fund to which contributions are made.

There are variations on these general principals such as where the employer and employee discuss to which fund contributions are to be made to and where SGC contributions are made to an industry fund. However, there are pressures on employers to seek the least expensive way of paying superannuation contributions which generally means that the

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employer will choose one fund for all employees so that they do not have to deal with more than one fund. Costs rise when employers have to contribute to more than one fund, and naturally, employers want to contribute to as few funds as is possible. The more funds that the employer has to contribute to, the higher the administrative costs imposed on employers.

Under award superannuation, the fund to which contributions are to be made is specified in the award. Under SGC, superannuation contributions must be made to a complying fund, which is one certified by the Australian Prudential Regulation Authority (APRA) under the *Superannuation Industry (Supervision) Act 1993*.

State Law

State awards oblige certain employers to make superannuation contributions on behalf of their employees. In most cases, the award specifies a particular fund. Some State industrial legislation (and industrial awards) permit choice of superannuation fund for contributions made in accordance with a State industrial award. The State jurisdictions that have unilaterally implemented choice of superannuation fund (and the relevant Acts) are as follows:

- *Industrial Relations Act 1999* (Queensland), section 405.
- *Industrial Relations Act 1996* (New South Wales), section 124.
- *Industrial Relations Act 1979* (Western Australia), section 49C.

These provisions are reproduced at the Attachment.

1996 Coalition Pre-Election Commitment

Prior to the 1996 election, the Coalition made the following promise on choice of superannuation fund.

Awards will be required to offer workers a choice of up to five funds including employer, industry, personal and RSAs. Additional funds may be used with the employer's concurrence. Workplace agreements would include similar choice arrangements.³

1997-98 Budget

Additional details on the Government's choice of fund proposals were announced in the 1997-98 Budget. The original proposals, which were subsequently altered, had the following features:

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- employers would be required to offer a choice of a minimum of 5 complying funds or Retirement Savings Accounts (RSA) to choose from, including an industry fund (where one exists), a public offer fund, a RSA, a RSA provided by the institution receiving the employee's pay (if the institution offers RSAs) and, if it exists, an in-house superannuation fund
- if the employee did not make a choice of fund within 28 days the employer could nominate the fund
- the choice of fund was to apply to new employees from 1 July 1998 and to existing employees two years later
- Federal awards relating to superannuation would be overridden by the legislation but this would not apply to superannuation payable under State awards due to Constitutional restrictions
- agreements under the *Workplace Relations Act 1996* could overrule the legislation, and
- the legislation would not apply to unfunded government schemes.⁴

November 1997 Changes

Following the release of the policy there was considerable employer concern regarding their potential liability if they failed to provide sufficient, or accurate, information regarding the various funds that their employees had to choose from. Employers feared that they may be held liable for any loss suffered by an employee if they provided insufficient, false or misleading information. Lobbying from various organisations, particularly employer groups, resulted in the proposals being changed and the changes were announced by the Assistant Treasurer in a Press Release dated 25 November 1997. Major changes related to:

- employers would not be liable where they have complied with the Bill
- removing the requirement that employers had to offer a RSA from the institution that received the employee's pay, where such a RSA existed, so reducing the number of alternatives that had to be offered to 4
- allowing employers to offer the employee unlimited choice of fund (where the onus will be on the employee to collect the relevant information and select the fund of their choice), and
- allowing the selection of the funds to be offered to be facilitated through one institution or service provider.

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The choice of fund rules would be enforced by providing for a maximum increase of 25 per cent in the SGC that would have been payable if no superannuation contributions had been made.

1998 Senate Inquiry

In March 1998, the Senate Select Committee on Superannuation released its 28th report *Choice of Fund*.⁵ The Committee inquired into the provisions of the Government's legislation on choice of fund (the then Taxation Laws Amendment Bill (No. 7) 1997), and related issues.

The Committee encountered considerable support for the broad concept of choice of fund, although many witnesses were doubtful to varying degrees about its practical operation. The Committee also encountered some dissent about whether the policy would deliver the anticipated economic benefits.

The Committee considered many issues during its hearings, including the following:

- there was a great deal of competition within the industry, particularly between fund administrators and investment managers, driven by the demand of well-informed trustees
- the policy was being driven by actual demand for change on the part of employers and employees (ie, that there was no evidence that significant numbers of employees sought choice of fund)
- employers regarded choice as yet another unwanted administrative burden
- supporters of choice were principally motivated by possible commercial advantage from the policy
- the success of the policy depended on employees making an "informed choice" – that employees understand the consequences of the decisions they make (in many cases, this may mean staying with their current fund)
- witnesses called for extensive education campaigns to ensure consumers make an informed choice (some cast doubt on whether such an education campaign is achievable in the relatively short time before the legislation is to come into force)
- the information provided to employees who are offered choice should not create an atmosphere that encourages change for the sake of change. Australia must learn from the U.K. experience.
- key feature statements (disclosing fees, charges, commissions and other key features) be standardised and simplified, so that consumers can "compare apples with apples"

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- investment choice within funds (or member investment choice)
- the selection of the default fund
- availability and level of death and disability insurance cover⁶
- consumer protection, including dispute resolution
- application of choice to defined benefit schemes
- the proposed definition of industry funds
- the implications of removing superannuation from the allowable matters list under the *Workplace Relations Act 1996*.

Government Senators on the Committee recommend that the Senate pass Taxation Laws Amendment Bill (No.7) 1997 without further delay.

Labor Senators on the Committee stated that choice is being driven by the Government's ideology and vested interests that stand to benefit from choice. Labor Senators recommend that the Taxation Laws Amendment Bill (No.7) 1997 not be supported without extensive amendments. Labor Senators proposed amendments on issues such as: timing, disclosure, choice of the default fund, insurance, the definition of 'industry-based funds,' the need for consistency with State choice legislation, the removal of superannuation from federal awards, and the need for an independent arbitrator.

Australian Democrats Senators on the Committee saw merit in moving to improve the choice mechanisms within the superannuation system as a means of enhancing the ownership and control by members over their investments. They also noted that choice should be implemented in a way that maximises benefits to employees while minimising costs to the system as a whole. The Australian Democrats argued that Government's choice regime needed to be substantially amended to shift the benefits of the proposal in favour of employees.

Legislative History: Previous Bills

In the 39th Parliament, two separate Bills were introduced to implement choice of superannuation fund. The history of the passage of these Bills is provided below.

Taxation Laws Amendment Bill (No. 7) 1997

The choice of fund rules were originally introduced in Taxation Laws Amendment Bill (No. 7) 1997 which also contained a number of unrelated taxation measures.

As noted in the background contained in the Digest for Taxation Laws Amendment Bill (No. 7) 1997,⁷ concerns had been expressed early on that there would be insufficient time

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for the passage of the legislation and its implementation before the starting date for new employees proposed in that legislation, ie. 1 July 1998. A specific concern was that there would be insufficient time for an education campaign to explain the choice rules to employees and employers to enable them to make informed decisions. In addition, the relevant regulations had not been finalised.

On 8 April 1998, before the Taxation Laws Amendment Bill (No. 7) 1997 was introduced into the Senate on 13 May 1998 as the Taxation Laws Amendment Bill (No. 3) 1998, the Assistant Treasurer announced that the starting date for the choice of fund rules would be deferred, although no new starting date was given at that time. The Assistant Treasurer announced on 13 May 1998 that the new starting date would be 1 July 1999 for new employees and that the starting date for existing employees would remain the same, ie. 1 July 2000.

Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 1998

To enable the passage of the other taxation measures in Taxation Laws Amendment Bill (No. 3) 1998, the choice of fund measures were removed from the Taxation Laws Amendment Bill (No. 3) 1998 in the Senate and reintroduced in a stand-alone Bill, the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 1998.

The Senate debated and defeated the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 1998 on 8 August 2001.

2001 Pre-Election Commitment

During the 2001 election campaign, the Government reaffirmed its commitment to choice of superannuation fund in its superannuation policy statement *A Better Superannuation System*.⁸

2002-03 Budget Announcements

The 2002-03 Budget provided further details about the implementation of these proposals. An extract from the Budget Papers is reproduced below.

Choice of superannuation fund and portability

Expenses (\$m)

	2002-03	2003-04	2004-05	2005-06
Australian Taxation Office	-	-	-	-

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Explanation

The Government has allocated \$28.7 million for the Australian Taxation Office (ATO) to administer choice of superannuation and undertake an extensive community education campaign to inform employees and employers of their rights and obligations in relation to choice of superannuation; and inform superannuation funds and their members about portability of existing superannuation balances. The Government will give employees the choice to determine the superannuation fund into which their Superannuation Guarantee contributions are paid, and allow members of accumulation funds to move existing benefits to their fund of choice.

These policies will increase competition, efficiency and performance within the superannuation industry and benefit members through lower fees and charges and increased returns.

This measure will involve expenditure of \$12.7 million in 2002-03, \$10.3 million in 2003-04, \$3.4 million in 2004-05 and \$2.3 million in 2005-06 which is being fully absorbed within the existing resourcing of the ATO.⁹

Main Provisions

The items in this Bill amend the *Superannuation Guarantee (Administration) Act 1992*.

Contributions that Satisfy Choice

Item 22 of Schedule 1 of the Bill inserts the requirements that must be complied with to satisfy the choice of fund rules. **Proposed section 32C** provides that the requirements will be satisfied in a number of circumstances:

- where the employer contribution is made to a chosen fund (see below), a default fund (see below) or for a member of either of the Commonwealth schemes (CSS and PSS) - the contribution is made to an unfunded public sector scheme
- the contribution is made under an Australian Workplace Agreement or a certified agreement
- for people employed under State awards, the requirements will be taken to have been satisfied.¹⁰ It may be noted that the SGC scheme as a whole applies to State employees as well as those employed under State awards and is based on the taxation power of the Commonwealth which also applies to State award employees)
- where contributions are made under relevant Victorian or prescribed Commonwealth, State or Territory legislation, and

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- contributions made after employees cease employment.

Employee Chosen Funds

Proposed Division 4 provides the processes that can be followed for choosing a fund. **Proposed section 32F** provides that an employee can select a fund in accordance with requirements of **proposed Division 6**. Under this process, an employer must give employees a 'standard choice form' within 28 days of the employee commencing or within 28 days of the employee requesting a choice, although there may only be one such request every 12 months. The employer must also offer a choice within 28 days of becoming aware that they cannot contribute to the chosen or default fund. As well, the employer may offer a choice at any time the employer chooses (**proposed sections 32M and 32N**).

A fund will cease to be a chosen fund if:

- there is another fund that is a chosen fund for the employee
- the employee has not given the employer a written notice stating that the old fund continues to be a chosen fund for the employee
- the employee requests a 'standard choice form' and the employer does not provide it within 28 days
- if it is impossible for the employer to contribute to the chosen fund, and
- it ceases to be an eligible choice fund (**proposed section 32H**).

While the example given in the Bill is of a closed fund, it may take litigation to establish exactly the meaning "impossible for the employer to contribute to the chosen fund." For example, would this include the employer not being able to finance the contributions? (**proposed section 32H**).

Eligible Choice Funds

Proposed section 32D lists the superannuation providers that will be 'eligible choice funds.' They are:

- a complying superannuation fund or scheme
- a RSA, and
- where the fund is presumed to be a complying fund while further information is sought or a decision on complying status is pending.

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This restrictions ensures that superannuation contributions are made to funds that comply with (or are in the process of complying with) the superannuation prudential standards enforced by the Australian Prudential Regulation Authority.

Default Funds

Proposed section 32K establishes the default fund that will apply to an employee.

For new employees or on-going employees whose default fund has ceased by virtue of **proposed section 32L**, the default fund will be:

- the Commonwealth or Territory industrial award fund for the employee
- if there is no Commonwealth or Territory industrial award fund for the employee – the majority fund, or
- if there is no Commonwealth or Territory industrial award fund for the employee and no majority fund – any eligible fund chosen by the employer (**proposed section 32K(2)**).

If there is more than one fund provided in the award for employees, the employer must choose one as the default fund for the employee (**proposed sections 32K(5) and (6)**).

The majority fund is the 'eligible choice fund' to which the employer contributes on behalf of more employees than any other fund (**proposed sections 32K(7), (8) and (10)**). If an employer contributes on behalf of the same number of employees to two or more funds, the employer must choose one of them as the default fund for the employee (**proposed sections 32K(9)**).

On the commencement date of the Bill (1 July 2004), the default fund for existing employees will be last eligible choice fund to which the employer contributed to on behalf of the employee prior to 1 July 2004 (**proposed sections 32K(3)**).

A fund ceases to be a default fund if:

- the employee ceases to be employed by the employer
- the employer ceases to be able to contribute to the fund on behalf of the employee
- the default fund ceases to be a default fund for that employee, or
- the employer cannot obtain the information about the default fund required under proposed paragraphs **32P(1)(d), (e) and (f)** (**proposed section 32L**).

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Standard Choice Forms

Proposed section 32P provides that a 'standard choice form' contain the following information:

- a statement that the employee may choose any 'eligible choice fund' as a chosen fund
- the date the form was given to the employee and the date by which the employee must make a choice, and
- information required to be provided in accordance with Regulations, including details of the default fund and particular information for members of defined benefit fund members about their scheme.

Notification of chosen fund

Employees must advise the employer of their chosen fund, in writing, within 28 days of being given the 'standard choice form' (**proposed section 32Q**).

Notification that chosen fund is a complying fund

An employer may also request an employee provide notice that the chosen fund is a complying fund (**proposed section 32S**). This must be provided within 28 days of the employer's request.

Employer Liability

Employers' potential liability for damages will be addressed by **proposed section 32ZA** which provides that an employer will not be liable for anything done in complying with the choice of fund rules.

Exemption from Choice for Certain Defined Benefit Funds

Proposed section 32V makes the following exemption from the choice of fund requirements:

- defined benefit funds in surplus at all time since 1 July 2004, and
- defined benefit members of defined benefit funds that have reached their accrued benefit maximum.

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Other Political Parties' Views

Australian Labor Party

The ALP voted against the previous Bills implementing choice of fund.

Early indications were that ALP Members and Senators would continue to oppose the Government's Bill to introduce choice of fund. On 2 August 2002 Senator the Hon. Nick Sherry released the Labor Party's Superannuation Policy Paper A: *Broader Choice, Stronger Protection and Fairer Tax*. This paper does not set out the ALP's views on the Government's Bill, rather it outlines broader choice of fund options, including:

- Full portability and automatic consolidation of multiple accounts unless an individual determines otherwise
- Banning of entry and exit fees that act as a barrier to this occurring
- Full portability will streamline the system by reducing the current 24 million accounts for 8 million fund members.
- No employer veto on an employee's choice of fund
- Prohibiting entry and exit fees that act as a barrier
- A cap on fees and charges that can be charged against the employees 9 per cent superannuation guarantee contributions
- Meaningful disclosure so that consumers can make an informed investment choice
- Full investment choice options including ethical investment
- Full compensation in the event of theft and fraud
- Expanding compensation to certain post-retirement products not currently protected at all
- Extending employee entitlements protection on bankruptcy of a business to include outstanding superannuation monies
- It is critical in any private retirement savings system that Australians are fully compensated if their money is stolen or if their employer goes bankrupt
- Ensuring all employers allow voluntary salary sacrifice contributions by employees without deducting it from the base of compulsory superannuation guarantee
- Greater contribution incentives for the self-employed

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- A fairer tax cut by either cutting the contributions tax for all Australians who pay it from 15 per cent to 13 per cent or cutting that tax for people aged 40 and over from 15 percent to 11.5 per cent.
- Labor's alternative tax cut is fairer and better targeted than the Liberal's proposal to cut tax only for those earning more than \$90,500 a year.

Australian Democrats

The Australian Democrats have been reported as stating that "they will not be changing their policy on superannuation."¹¹ This policy included a condition that they would support choice of fund on the condition that survivor's benefits be payable to members of same sex couples.

The Australian Democrats have also have also stated that the current law should be amended to allow survivor benefits to a wider range of people, including from children to their parents, between siblings, and to life long friends.¹²

Pros and Cons

The Senate Select Committee on Superannuation examined the arguments for and against choice of fund.¹³ Some of these arguments (and some contrary views) are outlined below.

Pro-Choice of Fund Arguments

Economic Argument

The reasons given for the introduction of the choice of fund rules is given in the second reading speech to the Taxation Laws Amendment Bill (No. 7) 1997.

The choice of fund arrangements are designed to give employees greater choice and control over their superannuation savings, which in turn will give them greater sense of ownership of these savings. The arrangements will increase competition and efficiency in the superannuation industry, leading to improved returns on superannuation savings.

The economic argument in favour of choice has been applied in other industries where de-regulation and competition has been introduced (airlines, telecommunications, electricity).

Economic Ownership

It is unusual that for a compulsory financial product like superannuation, people have limited choice over the fund that holds their money. Currently, the Government decides

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and forces employees to forgo current income in favour of forced saving through superannuation funds. Employers decide the fund to which contributions are made, and the trustees decide on the investment strategy. For many, it is only at retirement that the member has any significant control of their money. It is an important philosophical issue for people to be able to control their money and investments, including superannuation.

A contrary view is the status quo should be preserved because superannuation is compulsory. It is one of the few things that legislation requires employees to have, thereby elevating it to a special status; government does not even have a law that requires people to have bank accounts. The "special because its compulsory" argument can be addressed by drawing an analogy to Australian voting laws: it is compulsory for people in Australia to vote, yet people have a choice over who they can vote for, or even vote informally or not vote at all (although facing risk of penalty). The "special because its compulsory" status of superannuation could therefore be questioned.

Anti Choice of Fund Arguments

Few groups or individuals have argued against the principle of choice of fund.¹⁴ While the proposal has received support from a range of areas, a number of concerns have been raised about the *practical consequences* of the proposed legislation. Some of these main arguments are summarised below.

Costs Will Rise

One problem that has been anticipated is an increase in advertising for the various competing products, which could have the effect of increasing costs to funds and so reducing the return to members. For example, the Australian Consumers' Association has stated that without adequate regulation, fees and charges would keep rising with superannuation in the same way that deregulation of banks led to an increase in bank fees and charges.¹⁵

Complicated Product Information

Another potential problem is whether people will be able to understand the information provided or will spend the time understanding the information provided. Given that nearly four out of five people do not complete their own tax return (due to the complexity), even fewer attempt to work out their superannuation arrangements. The Minister for Revenue and Assistant Treasurer, Senator the Hon Helen Coonan has addressed this concern in the following manner.

The arguments against choice are tantamount to saying that because buying a home is a complex and important transaction requiring education and understanding if a good deal is to be made, we should take the choice away from individuals and let employers choose the right home for them.

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I know it sounds ridiculous. We don't let employers choose our homes. We don't let employers tell staff where to bank, who to insure with or which stocks to buy. So why continue with a system where people have little say in how one of their largest assets is invested?¹⁶

Short-termism

The onus will be on the employee to research the available options. A potential problem is the method in which funds are presented to employees and the likely emphasis on short-term growth rather than longer-term growth and stability. While previous returns may be used to advertise the performance of a fund, a trustee of the Australia Post superannuation scheme has noted: "making investment decisions based on past performance data has been particularly unreliable as an investment strategy."¹⁷

There is therefore the fear that employees may be offered advertising for a fund that promises a large return based on short term performance rather than the long term viability of the scheme and this "headline" performance could be used to attract people to a fund where the potential member does not fully understand the risks associated with the investment strategy of the fund. The example often used is recent events in the UK where people were given a choice of pension fund. It has been reported that an inquiry into the new scheme found 570 000 cases of miss selling worth approximately \$11 billion.¹⁸ In addition, in 1997 in Chile, almost 70 per cent of fund members applied to change between funds which were largely identical on the basis of inducements offered by a "sales force hungry for high commissions."¹⁹

Senator the Hon Helen Coonan has addressed this concern in the following manner:

The other issue raised by those opposed to employees having a say in where their superannuation is invested, is how a similar policy was implemented in the UK some years ago. What they fail to take into account is the different regulatory environment we have in Australia, and particularly the recent reforms to financial services regulation²⁰ which provide the safeguards, disclosure and information that are needed to successfully implement a system of choice.²¹

Multiple Accounts

Other concerns are that choice of fund could stimulate a further proliferation of accounts. Each employee has, on average, over 3 superannuation accounts. Choice of fund only applies to future (yet to be made) superannuation contributions: it does not apply to the \$532 billion already invested in superannuation funds. Annual choice of fund offering, combined with short-termism (employees choosing the fund with the highest returns) may lead to a person having a number of small accounts rather than one account.

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Concluding Comments

The Bill differs in some respects from earlier versions introduced into the Parliament. The major difference involves the selection process: it is easier than the process provided in earlier Bills.

In the former Bills, employers could offer their employees choice of fund via one of three means: a workplace agreement, the "unlimited choice method" (ie. the employee chooses) or the "limited choice method" (the list of 4 or more funds chosen by the employer and offered to the employee).

This Bill employs a model very similar to those adopted in Queensland, Western Australia and New South Wales where the selection of the "default fund" is simplified by first using the fund nominated in the relevant industrial awards. The only major difference is that this Bill requires employees to be offered a choice, whereas Sate systems enable employees to make a choice, should they be interested.

Choice of fund is a polarising issue. Views are clearly divided along party lines. For many it is an important philosophical issue that needs to be resolved by letting employees choose their superannuation fund. For others, it is extreme folly because of the Bills likely influence on fund costs, complicated product information, the risk of members being fixated by short term (rather than long term) performance, and the risk of further multiple account proliferation.

Endnotes

- 1 Department of the Treasury, *2001 Tax Expenditure Statement*, December 2001, p. 33.
- 2 Superannuation funds are trusts run and administered by trustees for the benefit of members.
- 3 *Super For All – Security and Flexibility in Retirement The Federal Coalition's Superannuation and Retirement Incomes Policy*, February 1996, p. 3.
- 4 The Hon. Peter Costello, MP, Treasurer, *Budget Measures 1997-98 Budget Paper No. 2*, pp. 189-191.
- 5 The report can be accessed via the following link:
http://www.aph.gov.au/Senate/committee/super_ctte/report_28/CONTENTS.htm .
- 6 For more information, see *Superannuation Choice-Do You Want Insurance With That?*, Research Note 25 1999-2000, Department of the Parliamentary Library, 15 February 2000 (<http://www.aph.gov.au/library/pubs/rn/1999-2000/2000rn25.htm>).
- 7 <http://www.aph.gov.au/library/pubs/bd/1997-98/98bd129.htm> .

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- 8 Liberal Party of Australia, 5 November 2001.
- 9 The Hon. Peter Costello, MP, Treasurer, *Budget Measures 2002-03 Budget Paper No. 2*, p. 164.
- 10 The 1997-98 Budget Papers stated that this was for Constitutional reasons and that the States would be asked to pass complimentary legislation.
- 11 Zilla Efrat, "Cherry – in season on super," *Super Review*, July 2002, p. 12.
- 12 Senator John Cherry, '*Labor's choice options fall shrot (sic) on equity test*,' Press Release Number: 02/378, 2 August 2002.
- 13 The Senate examined the provisions in an earlier Bill, that is *Taxation Laws Amendment Bill (No. 7) 1997*. See Senate Select Committee on Superannuation, *28th Report of the Senate Select Committee on Superannuation: Choice of Fund*, 28 March 1998.
http://www.aph.gov.au/senate/committee/super_ctte/report_28/CONTENTS.htm
- 14 See Paul Cleary, "Getting a grip on fees," *Australian Financial Review*, August 3-4 2002, pp. 16-27.
- 15 Toni O'Loughlin, "Labor backs super choice – if its cheap," *The Sydney Morning Herald*, 3 August 2002.
- 16 Senator the Hon Helen Coonan, Minister for Revenue and Assistant Treasurer, *Retirement Incomes In Perspective*, Speech to the Personal Investor Magazine Awards for Excellence in Financial Services 2002, Sydney, 24 July 2002.
- 17 *The Australian Financial Review*, 15 January 1998.
- 18 *The Australian Financial Review*, 11 December 1997; Susan Hely, 'Choice: its not all right', *Superfunds*, May 1998, p. 15.
- 19 Susan Hely, 'Choice: its not all right', *Superfunds*, May 1998, p. 15.
- 20 That is, *Financial Services Reform Act 2001* that commenced on 11 March 2002.
- 21 *Retirement Incomes In Perspective*, Speech to the Personal Investor Magazine Awards for Excellence in Financial Services 2002, Sydney, 24 July 2002.

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Attachment: Choice under State Legislation

Queensland

Industrial Relations Act 1999, section 405

- (1) This section applies if an industrial instrument requires an employer to pay contributions to a specified superannuation fund.
- (2) Despite the instrument, the required contributions may be paid to a complying superannuation fund agreed to by the employer and employee.
- (3) The agreement must be written and signed by the employer and employee.
- (4) A person must not coerce someone else to make an agreement mentioned in subsection (3).

New South Wales

Industrial Relations Act 1996, section 124

124 Superannuation fund contributions

- (1) If an industrial instrument requires an employer to pay contributions to a specified superannuation fund for the purpose of providing superannuation benefits to or in respect of an employee of the employer, the required contributions may, despite the industrial instrument, be paid to a complying superannuation fund nominated for the time being by the employee and approved by the employer.
- (2) However, subsection (1) applies only if:
 - (a) the nomination of the complying superannuation fund by the employee is in writing and signed by the employee, and
 - (b) the employer has given the employee a copy of the nomination and written notice of the employer's approval of the nomination, and
 - (c) the employer retains a copy of the nomination.
- (2A) An employee may, by notice in writing, revoke a nomination under this section.
- (3) In this section complying superannuation fund means a superannuation fund that, for the relevant year of income, is a complying superannuation fund within the meaning of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth. Superannuation fund has the same meaning as it has in the Superannuation Industry (Supervision) Act 1993 of the Commonwealth.

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Western Australia

Industrial Relations Act 1979, section 49C

(1) In this section --

"complying superannuation fund or scheme" means a superannuation fund or scheme --

- (a) that is a complying superannuation fund or scheme within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth; and
- (b) to which, under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme.

(2) In exercising its jurisdiction under this Part the Commission shall not make an award or order, or register an industrial agreement, which requires contribution to a superannuation fund or scheme by an employee or by an employer in respect of an employee unless the award, order or industrial agreement --

- (a) permits the employee to nominate a complying superannuation fund or scheme;
- (b) requires the employer to notify the employee of the entitlement to nominate a complying superannuation fund or scheme;
- (c) requires the employer --

- (i) if the award, order or industrial agreement specifies one or more complying superannuation funds or schemes to which contributions may be made, to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer, until the employee nominates a complying superannuation fund or scheme; or
- (ii) if the award, order or industrial agreement does not specify a complying superannuation fund or scheme to which contributions may be made, to make contributions to a complying fund or scheme nominated by the employer until the employee nominates such a fund or scheme;

- (d) requires the employee and employer to be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made; and
- (e) provides that an employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by an employee.

(3) The Governor may make regulations --

- (a) prescribing procedures to be followed by an employer in notifying an employee of entitlement to nominate a complying superannuation fund or scheme; and

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(b) prescribing procedures to be followed by an employee in nominating a complying superannuation fund or scheme.

(4) A person shall not by threats or intimidation persuade or attempt to persuade --

(a) an employee or prospective employee to nominate a particular superannuation fund or scheme; or

(b) an employer to make contributions to a particular superannuation fund or scheme.

Penalty:

(a) in the case of an individual, \$1 000;

(b) in any other case, \$5 000.

(5) In subsection (4) --

"threats" includes any conduct by an employer that clearly indicates to an employee or prospective employee that employment or promotion is conditional upon the employee nominating, or changing to, a complying superannuation fund or scheme suggested by the employer.

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