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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

SUPERANNUATION LEGISLATION AMENDMENT (CHOICE OF
SUPERANNUATION FUNDS) BILL 1998

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be moved on behalf of the Government

(Circulated by authority of the
Treasurer, the Hon Peter Costello, MP)

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Glossary

The following abbreviations and acronyms are used throughout this supplementary explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ASIC	Australian Securities and Investment Commission
APRA	Australian Prudential Regulation Authority
ATO	Australian Taxation Office
PDS	product disclosure statement
RSA	retirement savings account
SGAA 1992	<i>Superannuation Guarantee (Administration) Act 1992</i>

General outline and financial impact

Choice of superannuation funds

These amendments will:

- remove the limited choice option for employers;
- ensure the choice of funds regime commences on 1 July 2003 for all employers and employees;
- give effect to the new default fund arrangements and prescribe minimum levels of insurance in respect of death that default funds must offer members in order to qualify;
- make available to employees a standard form to assist in choosing between funds;
- make other minor technical amendments to the Bill to better reflect the choice of fund arrangements; and
- provide ASIC with regulatory authority in relation to Part 3 of Schedule 1.

Date of effect: The amendments will apply from the date of Royal Assent of the Bill.

Amendment announced: Not previously announced.

Financial impact: Nil.

Compliance cost impact: The amendments do not materially alter the compliance costs associated with the choice of fund proposal, as contained in the explanatory memorandum to the Bill.

Summary of regulation impact statement

Regulation impact on business

Impact: Low to medium impact on employers, employees and superannuation funds/RSA providers.

Main points:

- The choice of funds proposal will provide employees with greater choice as to which complying superannuation fund or RSA will receive compulsory superannuation contributions.
- Employers must provide employees with a choice of fund by 1 July 2003. They will also be required to provide a standard choice form to employees before they exercise choice.
- Superannuation funds and RSA providers will be required to produce PDSs to facilitate the choice process.

Chapter 1

Choice of superannuation funds

Overview

- 1.1 The amendments make improvements to the proposed choice of superannuation fund legislation contained in the Bill.
- 1.2 The improvements will reduce employer obligations by removing the limited choice option and will ensure employees receive information to assist in choosing between funds before they exercise choice.
- 1.3 The improvements will also give effect to the new default fund arrangements and prescribe minimum levels of insurance in respect of death that default funds must offer members in order to qualify.

Background to the legislation

- 1.4 The proposal to introduce a choice of superannuation fund regime for employees was announced in the 1997-1998 Budget as part of a number of changes designed to improve Australia's retirement income system.
- 1.5 The Bill was passed by the House of Representatives on 16 February 1999 and introduced into the Senate on 17 February 1999.
- 1.6 These amendments have not previously been announced.

Explanation of the amendments

Removal of the limited choice option for employers

- 1.7 The Bill will be amended to remove the limited choice option for employers. Accordingly, a requirement to formally provide employees with a choice of fund will be satisfied by the provision of unlimited choice in accordance with Division 6 of the Bill.
- 1.8 Sections 32N, 32P and 32Q are therefore no longer necessary and will be removed *[amendments 39 to 41]*. Definitions introduced into subsection 6(1) of the SGAA 1992 to compliment section 32Q are also no longer necessary and will be removed *[amendments 2 to 8]*.

1.9 Section 32T previously limited the funds that could be chosen by employees offered choice. Section 32T will be amended to give effect to unlimited choice. Employees will be able to choose any eligible choice fund as their chosen fund provided their employer can contribute to the fund on their behalf at the time the choice is made. *[Amendments 22, 23, and 51]*

Choice of funds to commence on 1 July 2003

1.10 The amendments contained in the Bill apply from the day of Royal Assent. Commencement of the choice measure is effected by virtue of subsection 32C(6) *[Schedule 1, item 32]* by deeming contributions made before 1 July 1999 for new employees and before 1 July 2000 for ongoing employees as satisfying the choice of fund requirements.

1.11 To give effect to the new start date, subsection 32C(6) will be amended to ensure contributions made before 1 July 2003 satisfy the choice of fund requirements. *[Amendment 19]*

1.12 Item 25 of Schedule 1 inserts new subsection 19A(2) which exempts employers from the choice requirements in respect of existing employees who are defined benefit members of defined benefit superannuation schemes in surplus, prior to the commencement of choice, and which remain in surplus after this date. Paragraph 19A(2)(a) will be removed and dates within paragraphs 19A(2)(b), (c) and (d) will be amended to ensure this exemption continues to apply after the new start date of 1 July 2003. *[Amendments 10 to 13]*

1.13 Non-public offer funds will be required to comply with the new product disclosure requirements from the commencement of choice. Amendments made by *Schedule 1, items 33 to 36, 41, 42, 51, 52, 55, 56, 60, 62 to 64 and 66* will commence on 1 July 2003. *[Amendments 1 and 61]*

New default fund arrangements

1.14 The amendments to be made to Division 5 of the Bill *[Schedule 1, item 32]* will give effect to the new default fund arrangements.

When there is a default fund

1.15 Section 32J *[Schedule 1, item 32]* will be simplified to ensure an employer has a default fund to contribute to at all times where they have met an obligation to provide a standard choice form to an employee in accordance with Division 6 *[amendment 28; new section 32J]*. Failure to comply with a requirement to provide an employee with a standard choice form will cause the default fund to temporarily cease (the employer will not have a default fund available to contribute to) until that outstanding obligation is satisfied. Amendments to section 32C compliment the above by making it clear that where there is a chosen fund, an employer cannot satisfy their choice requirements by contributing to the employee's default fund *[amendments 16 and 17]*.

What fund is the default fund

1.16 Section 32K [Schedule 1, item 32] establishes the default fund that will qualify in relation to an employee [amendment 28; new section 32K]. Default funds will also be required to provide minimum levels of insurance in respect of death in order to qualify.

1.17 Subsection 32K(1) makes clear the intention that once ascertained, the default fund determined in accordance with new section 32K remains the default fund in relation to that employee until one of the situations in new section 32KA occurs. Where a default fund ceases to qualify as a default fund under section 32KA, the new default fund for the employee is to be determined in accordance with section 32K on the basis that the fund that ceased to be a default fund no longer exists. After the subsequent default fund is determined the fund that ceased may again qualify as a default fund in relation to that employee.

1.18 For new employees or on-going employees whose default fund has ceased by virtue of section 32KA, the default fund will be [amendment 28; subsection 32K(2)]:

- the Commonwealth or Territory industrial award fund for the employee [amendment 28; paragraph 32K(2)(a)];
- if there is no Commonwealth or Territory industrial award fund for the employee – the majority fund [amendment 28; paragraph 32K(2)(b)]; or
- if there is no Commonwealth or Territory industrial award fund for the employee and no majority fund – any eligible default fund selected by the employer [amendment 28; paragraph 32K(2)(c)].

Commonwealth or Territory industrial award fund

1.19 If an employee is covered by a Commonwealth or Territory award the default fund will be the fund provided for in the relevant award. If there is more than one fund provided for in the award for employees, the employer must choose one of those funds as the default fund for the employee. For example, the relevant award may specify a particular fund or any other complying fund for employees, or specify a particular fund or any complying in-house fund for employees. Where this is the case the employer may choose any of the funds provided for in the award as the employee's default fund. [Amendment 28; subsections 32K(5) and 32K(6)]

1.20 The default fund must be determined in accordance with paragraph 32K(2)(b) (the majority fund) if:

- the award does not identify a fund the employer must contribute to on behalf of their employees;
- the funds provided for in the award do not meet the definition of an eligible default fund;
- the employer is unable to contribute to any of the funds provided for in the award; or
- the award provides employees with a choice as to where employer contributions are paid or it provides that the employer must agree to any such choice.

[Amendment 28; subsection 32K(5)]

Majority fund

1.21 If there is no Commonwealth or Territory industrial award fund for employees, the default fund will be the majority fund.

1.22 The majority fund is the eligible choice fund to which the employer contributes on behalf of more employees than any other fund. Employers will not be required to assess the majority fund each time a new employee commences employment. Rather, employers will be required to determine the majority fund at a minimum of once every 12 months. *[Amendment 28; subsections 32K(7), 32K(8) and 32K(10)]*

1.23 If an employer is unable to contribute to the majority fund on behalf of the employee or the majority fund does not meet the definition of an eligible default fund, the employer may select any eligible default fund in accordance with paragraph 32K(2)(c) as the default fund for the employee.

1.24 If an employer contributes on behalf of the same number of employees to 2 or more funds, the employer must choose one of those funds as the default fund for the employee. If the funds do not meet the definition of an eligible default fund or the employer is unable to contribute to any of these funds on behalf of the employee, the employer may select any eligible default fund in accordance with paragraph 32K(2)(c) as the default fund for the employee. *[Amendment 28; subsection 32K(9)]*

1.25 New employers will be able to select an employee's default fund in accordance with paragraph 32K(2)(c) for the first 12 months where paragraph 32K(2)(a) does not apply. After 12 months of having employees, employers must select the default fund in accordance with paragraph 32K(2)(b) where paragraph 32K(2)(a) does not apply. *[Amendment 28; subsection 32K(11)]*

Special rules for employees on 1 July 2003

1.26 The default fund for existing employees on the commencement of choice will be the last eligible choice fund to which the employer contributed on behalf of the employee before 1 July 2003 [amendment 28; subsection 32K(3)]. If this fund does not meet the definition of an eligible default fund the employer must determine the default fund in accordance with subsection 32K(2).

Eligible default funds

1.27 Funds must meet the definition of an eligible default fund in order to qualify as a default fund in relation to an employee [amendment 28; subsection 32K(4)]. An *eligible default fund* is an eligible choice fund that meets the prescribed requirements in relation to offering insurance in respect of death.

When does a fund cease to qualify as a default fund

1.28 A fund that is the default fund for an employee under Section 32K will cease to qualify as a default fund if:

- the employer is unable to contribute to the fund on behalf of the employee [amendment 28; subsection 32KA(1)];
- the fund ceases to be an eligible choice fund or ceases to meet the prescribed requirements in relation to offering insurance in respect of death [amendment 28; subsection 32KA(2)];
- the employer, after making reasonable efforts to obtain information prescribed under paragraphs 32R(1)(d) or (e), is unable to obtain that information [amendment 28; subsection 32KA(3)]; or
- the employee ceases employment with that employer [amendment 28; subsection 32KA(4)].

1.29 In order to protect employers, subsection 32KA(3) has been inserted. Under the new arrangements a particular fund qualifies as the default fund in relation to an employee. Situations may arise where employers will be unable to satisfy their choice of fund requirements if the selected default fund is unable to provide certain information in a timely manner (e.g. PDSs). If, after making reasonable efforts to obtain the prescribed information the employer is unable to do so, they will be able to determine a new default fund for the employee in accordance with subsection 32K(2).

1.30 Section 32L [amendment 30] and references to *funds* in section 32R [amendments 45 to 47 and 49] will also be amended to better reflect the new default fund arrangements.

Default fund examples

Example 1.1

Matthew has been in continuous employment with retail outlet Super Chicken since February 1998. Matthew is the sole employee of Helen. Helen has contributed to the Sure Fund on behalf of Matthew since he commenced employment.

At 1 July 2003, Matthew's default fund is the Sure Fund (the fund is an eligible default fund). The Sure Fund will be Matthew's default fund until one of the situations in section 32KA arises.

On 31 October 2003, Anna commences employment for Helen at Super Chicken. Anna is covered under the Retail Employees' Commonwealth award. The award states that the fund into which superannuation contributions are to be made is the Sure Fund.

Helen must select the Sure Fund as the default fund for Anna (the fund is an eligible default fund). The Sure Fund will be Anna's default fund until one of the situations in section 32KA arises.

On 23 December 2004, Sure Fund informs Helen that it will no longer accept further contributions (Helen is contributing to the Sure Fund as the default fund on behalf of both Matthew and Anna). Helen must provide a standard choice form to Matthew and Anna nominating the new default fund within 28 days (assuming the parties do not enter into a suitable agreement).

The new default fund is to be determined on the basis that the Sure Fund no longer exists. Therefore, because there is no award fund or majority fund (the award and majority fund no longer exists), Helen can choose any eligible default fund for Matthew and Anna.

Example 1.2

Phil commences employment with a recycling company on 29 January 2004. Phil is not covered by a commonwealth or territory award. The default fund in the first instance will be the majority fund.

Khali, Phil's employer, contributes to the Hoang Superannuation Fund on behalf of 10 employees and the First Choice Superannuation Fund on behalf of the other 4. The Hoang Superannuation Fund, however, is not an eligible default fund (it does not meet the prescribed requirements in relation to offering insurance). Therefore, because there is no award fund (Phil is not covered by an award) or majority fund (the majority fund is not an eligible default fund), Khali can choose any eligible default fund for Phil.

On 5 September 2004, Fran commences employment with the recycling company. Fran is not covered by a commonwealth or territory award. The default fund will again be the majority fund in the first instance.

Khali knows the majority fund is the Hoang Superannuation Fund (this was calculated less than 12 months ago when Phil commenced employment). The Hoang Superannuation Fund is now an eligible default fund (it meets the prescribed requirements in relation to offering insurance). Therefore, Fran's default fund is the Hoang Superannuation Fund.

Example 1.3

Victor commences employment with a glassblowing factory on 12 March 2004. Victor is covered by the Glassblowers Commonwealth award. There is a clause in the award that states employees should have a choice as to where compulsory employer contributions are paid. The award further states that in the absence of a choice, superannuation contributions are to be made to the Glass Superannuation Fund.

As the award states employees should have a choice as to where contributions are paid, Victor's default fund will be the majority fund in the first instance. If the majority fund (determined at least once in the previous 12 months) is not an eligible default fund, Victor's employer may choose any eligible default fund for Victor.

Standard choice form

1.31 From 1 July 2003, if there is no suitable agreement (collective agreement, Australian Workplace Agreement or individual written agreement) in place, employers will be required to provide employees with unlimited choice in accordance with Division 6. The Bill will be amended to ensure that employees provided with unlimited choice, will receive a standard choice form from their employer before they exercise choice. In order to successfully meet an obligation to provide a standard choice form, employers must include all of the information as required under section 32R. *[Amendments 27, 31, 33 to 38, 50 and 53]*

1.32 A standard choice form must be provided to an employee in writing and contain the following information *[amendments 42 and 43]*:

- a statement that the employee may choose any eligible choice fund as a chosen fund provided that fund is willing to accept employer contributions on their behalf;
- the day on which the standard choice form is provided and the day by which the employee must make a choice *[amendment 44]*;
- the default fund the employer will contribute to if the employee does not make a choice *[amendment 47]*;
- a list of matters, prescribed by regulation, that employees may wish to consider in choosing between funds *[amendment 48]*;

- disclosure information in relation to the default fund that is required under the regulations to be included; and
- where the employee is a member of a defined benefits scheme and the employer is contributing to that scheme on behalf of the employee, information that is required under the regulations to be included.

1.33 If no suitable agreement exists, employers will also be required to provide a standard choice form to existing employees on or before 28 July 2003. *[Amendment 32]*

1.34 If an employer is contributing to a defined benefit scheme on behalf of a defined benefit member, the employer will need to provide the information required by the regulations to an employee about the defined benefit fund (e.g. death benefits). To achieve this, employers will be required to provide defined benefit members of defined benefit superannuation schemes with a standard choice form before they exercise choice. *[Amendment 25]*

Other amendments

State awards

1.35 The intention in respect of employees employed under State awards has always been that they would be exempt from the Commonwealth choice rules, irrespective of the level of superannuation support provided.

1.36 Subsection 32C(4) will be amended in order to clarify that contributions made under or in accordance with a State award, including any part of the contribution in excess of the amount specified in the relevant award, will satisfy the choice of fund requirements *[amendment 18]*. For example, a contribution of 9% of an employee's salary, paid to a State award fund, will satisfy the choice rules even though only 3% is required under the award.

Collective agreements

1.37 The only collective agreements that will satisfy the choice of fund requirements are formal collective agreements via certified agreements (see subsection 32C(2)).

Other minor technical amendments

1.38 Unlimited choice will require employers to contribute in accordance with an employee's nominated fund within 2 months or such earlier time as the employer determines. Under the Bill, employers have the option of requesting additional information from the employee in accordance with section 32U. In addition, an employer will be provided the option of requesting the individual account details (if any) and contact details of the employee's nominated fund. [Amendment 52]

1.39 A minor technical amendment is made to new subsection 19(2A) [Schedule 1, item 24] to ensure the legislation is consistent with the SGAA 1992. [Amendment 9]

1.40 A minor technical amendment is made to section 32H. This will ensure a chosen fund ceases where another fund becomes a chosen fund for the employee, unless the employee has provided a notice to their employer stating the old fund continues to be a chosen fund for the employee. [Amendment 26]

1.41 The titles of Division 4 and Division 6 will be amended to better reflect the choice of fund arrangements. Division 4 will be amended to *Choosing a fund* and Division 6 will be amended to *Formal choice process*. [Amendments 14, 15, 20, 21 and 29]

1.42 To make the intention clear that informal agreements in accordance with section 32G only apply where they are made between an individual employee and employer, the section 32G heading will be amended to *What is a chosen fund – individual written agreements*. [Amendment 24]

ASIC authority

1.43 Part 3 of Schedule 1 to the Bill amends the *Superannuation Industry (Supervision) Act 1993* to put in place a mechanism to require all superannuation funds to provide product disclosure statements to prospective members. Currently only public offer superannuation funds are required to provide this information.

1.44 Part 3 of Schedule 1 currently refers to the Insurance and Superannuation Commissioner. The Bill will be amended to transfer regulatory responsibility for these provisions to the ASIC [amendments 54 to 60]. This is consistent with the Government's response to the Wallis inquiry.

Regulation impact statement

Policy objective

1.45 The policy objective of the choice of fund proposal is to provide employees with greater choice as to which complying superannuation fund or RSA will receive compulsory superannuation contributions made on their behalf by their employer. Greater competition and better returns will benefit all superannuation members and reduce, over time, pressure on the age pension system.

1.46 This measure is expected to increase competition, efficiency and performance within the superannuation industry and result in reductions in fees and charges for superannuation members.

Background

1.47 The choice of fund proposal was announced in the 1997-1998 Budget and was one of a number of measures announced in that Budget designed to enhance Australia's retirement income system.

Implementation options

General

Options subject to workplace agreements

1.48 All of the options discussed in paragraphs 1.53 to 1.56 would be subject to the terms of workplace agreements which provide employees with a choice of superannuation fund for their employer contributions. It would be inconsistent with workplace relations reforms for the terms of a workplace agreement to be overridden by the choice of fund requirements.

Education programs

1.49 Groups affected by the measure will familiarise themselves with the changes using assistance provided by the ATO and the ASIC.

1.50 The ATO will provide employers and employees with information in a number of forms. For example, the ATO will provide information through:

- new pamphlets directed specifically at an impact group (e.g. employers or employees), which sets out the information in a *question and answer* style;
- the ATO's existing internet facilities; and
- the ATO's existing telephone help lines.

1.51 Under some of the options outlined in paragraphs 1.53 to 1.56, fund/RSA providers will be required to prepare PDSs for the fund or RSA. These statements will be prepared in accordance with guidelines set out by ASIC.

1.52 The private sector may also contribute to the education of affected groups.

Option 1

1.53 Under option 1 an employee would be able to choose any complying superannuation fund or RSA which allows their employer to make superannuation contributions on their behalf. However their choice would be subject to the approval of their employer. This amounts to an informal agreement between the employee and their employer.

Option 2

1.54 Under option 2:

- an employee would be able to choose any complying superannuation fund or RSA which allows their employer to make superannuation contributions on their behalf;
- where employer contributions are being made to a defined benefit fund, the employer would need to provide the information required by the regulations to an employee about the defined benefit fund (e.g. death benefits);
- a standard choice form would be provided to employees within a specified time, for example, on or before 28 July 2003 for all existing employees and within 28 days of the commencement of employment for new employees;
- after making their initial choice, all employees would be able to make a further choice at least every 12 months thereafter;
- the employer would contribute to a default fund if the employee failed to make a choice within the specified time; and
- employers would be subject to financial penalties under existing Superannuation Guarantee arrangements if they fail to give effect to valid employee choices.

Option 3

1.55 Under option 3:

- an employee would be able to choose from at least 4 complying superannuation funds or RSAs offered by their employer. The choice offered would need to include an RSA, a public offer fund, and, where available, an industry fund and an in-house superannuation fund;
- PDSs for each of the funds nominated by the employer would need to be provided or made available to each employee by the employer. The fund or RSA provider would prepare PDSs;
- where employer contributions are being made to a defined benefit fund, the employer would need to provide the employee with the information required by the regulations concerning the defined benefit fund;
- that choice would need to be made within a specified time, that is, within 28 days of being provided with the standard choice form by the employer;
- after making their initial choice, employees would be able to make a further choice at least every 12 months thereafter;
- the employer would contribute to a default fund if the employee failed to make a choice within the specified time; and
- employers would be subject to financial penalties under existing Superannuation Guarantee arrangements if they fail to give effect to valid employee choices.

Option 4

1.56 Under option 4 employees can choose a fund using either option 1 or 2.

Assessment of impacts (costs and benefits) of each option

1.57 Impact groups:

- employers (approximately 654,000 will be affected);
- employees (approximately 4,065,000 will be affected); and
- superannuation funds, RSA providers (approximately 200,000 will be affected);

- professional advisers, for example, investment and tax advisers;
- ATO; and
- ASIC.

Analysis of the costs of the implementation options

General

1.58 Both employers and employees may incur some cost in negotiating a workplace agreement. This is only likely to be significant where the primary purpose of that agreement is to provide employees with a choice of superannuation fund. Costs will only be marginal where the provision of a choice of superannuation fund is part of a general workplace agreement.

Option 1

1.59 Paragraphs 1.60 to 1.67 detail the compliance and administration costs affected groups will incur under option 1.

Initial costs

Generally

1.60 All impact groups will need to familiarise themselves with the change. The ATO and ASIC will need to devote additional resources in providing information support to the other impact groups.

Employees

1.61 Employees will face costs in choosing a fund, as they have an unlimited choice and will likely need to seek information from alternative funds.

1.62 Employees will also face costs in negotiating with employers in order to agree on a fund or RSA.

Employers

1.63 Employers may need to update their technology to enable them to contribute to a wider number of funds than is currently the case. This may not be significant, as the employer will be able to vet the decision of the employee and continue to contribute to existing funds or RSAs. Also, contributing to a number of different funds is very similar to employers paying their employees' wages to a number of different deposit taking institutions. Advances in software and electronic commerce (e.g. it is possible for funds to allow transactions to occur over the net) should act to lessen the costs to employers.

Recurrent costs

Employees

1.64 Employees will incur additional record keeping requirements as they will need to keep track of what choices they agreed to.

Employers

1.65 Employers will face costs in assessing whether to accept an employee's nominated fund, and in negotiating with employees in order to agree on a fund or RSA.

1.66 There will also be additional record keeping requirements. Employers will need to keep track of what choices they agreed to.

1.67 There are no estimates of the costs involved with this option. The costs are likely to be slightly lower than the costs involved with options 2 and 3, as this option is less of an imposition on employers.

Option 2

1.68 Paragraphs 1.69 to 1.85 detail the compliance and administration costs affected groups will incur under option 2.

Initial costs

Generally

1.69 All impact groups will need to familiarise themselves with the change. The ATO and ASIC will need to devote additional resources in providing information support to the other impact groups.

Employees

1.70 Employees will incur costs in choosing a fund, as they will have an unlimited choice and will likely need to seek information from alternative funds.

Employers

1.71 Employers will incur some costs in selecting the default fund that is to be used where an employee fails to make a choice. For example, the employer will need to determine whether their employees are covered under a commonwealth or territory industrial award. If such an award does not cover the employees, then the employer must determine which fund they contribute on behalf of the majority of their employees. If neither of these options apply then the employer will need to select a fund which satisfies the requirements of an 'eligible default fund'. These costs are likely to be relatively more significant for smaller employers.

1.72 Employers may need to update their technology to enable them to contribute to a wider number of funds than is currently the case.

Contributing to a number of different funds is very similar to employers paying their employees' wages to a number of different deposit taking institutions. Advances in software and electronic commerce (e.g. it is possible for funds to allow transactions to occur over the net) should act to lessen the costs to employers.

1.73 Employers must provide a standard choice form to existing employees within 28 days of the commencement of choice and within 28 days of an employee commencing employment. This will involve a small cost to employers as they must ensure they have enough of the forms to give to their employees as well as the cost of distribution. It is intended that a form will be made available to employers which will lessen the costs of complying with this requirement.

Fund/RSA providers

1.74 Fund/RSA providers will also need to produce PDSs for employers to provide to employees where the fund or RSA is the default fund. Funds will incur costs of developing the new disclosure documents especially those who are currently not required to provide a PDS. These include vetting by lawyers of the PDS as well as printing costs.

1.75 Option 2 provides the most benefits of competition to the superannuation industry. Funds will be keen to attract new members into their fund and will provide a better product to keep their existing members. This competitive pressure may lead to a further rationalisation in the market with some funds being required to restructure in order to be attractive to new and existing members.

Recurrent costs

Employees

1.76 Employees will incur additional record keeping requirements as they will need to keep track of what choices they agreed to.

Employers

1.77 There will be a small ongoing cost of providing new employees with a standard choice form within 28 days of the commencement of employment. This cost will depend on the turnover of staff and is more likely to affect larger employers. Employers will also need to provide a standard choice form – within 28 days of being requested by an employee.

1.78 Employers will be required to provide prescribed information to employees who are defined benefits members of a defined benefit fund. Data from the APRA states that there are 333 defined benefit funds with 203,000 members in the private sector. Anecdotal evidence suggests that many of these funds are closed to new members. Therefore, it is expected that this requirement will only affect a minority of employers.

1.79 There will also be additional record keeping requirements. Employers will need to keep track of what choices were made, and when they were made. These costs will rise according to the number of employees, and will therefore be higher for larger employers.

1.80 Employers will have reporting and remitting obligations under the Superannuation Guarantee regime where they do not satisfy their obligations.

Fund/RSA providers

1.81 The default fund provider will be required to distribute their PDS to employers, who will then provide the statement to employees. The funds will also have to keep the information in the PDS current. This is especially the case with information about fund returns which will have to be updated approximately every 12 months.

ATO

1.82 Reporting and remitting obligations imposed on employers will result in a complementary increase in workflows for the ATO.

1.83 Total compliance costs (costs incurred by employers, employees and fund/RSA providers) are set out in Table 1.1.

Table 1.1

<i>Impact group</i>	<i>Initial costs (\$m)</i>	<i>Recurrent costs (\$m)</i>
Employers	21	15
Employees	N/A	N/A
Fund/RSA providers	5	2

1.84 The costs for employees are not available due to difficulties in predicting how they will react to the measure. For example, the cost to an individual who wants to exercise choice will increase as they analyse different funds, but if the majority of employees are currently happy with their existing fund and do not want to exercise choice then overall costs will be minimal.

1.85 The costs of implementing and administering the measure are set out in Table 1.2.

Table 1.2

2002-2003	2003-2004	2005-2006	2006-2007	Later years (per year)
\$8.0m	\$6.3m	\$3.4m	\$2.3m	\$1.3m

Option 3

1.86 Paragraphs 1.87 to 1.101 details the compliance and administration costs affected groups will incur under option 3.

Initial costs**Generally**

1.87 All impact groups, particularly employers, will need to familiarise themselves with the change. This cost will be greater for employers under this option, because they will be required to comply with a wider range of obligations. The ATO and ASIC will need to devote additional resources in providing information support to the other impact groups.

Employees

1.88 Employees will incur costs in choosing a fund from the suite nominated by the employer. These costs may be lower under this option than under options 1 and 2 because of the limited choices and the provision of PDSs for the nominated funds. However, employees will still incur costs associated with analysing the information provided for the 4 funds.

1.89 Employees who are not satisfied with the 4 funds chosen by their employer may bear the costs of being in what they perceive to be an inferior fund. They may also bear the costs of having to transfer the benefits from one of the 4 funds to a new fund when they leave the employer.

Employers

1.90 Employers may need to update their technology to enable them to contribute to a wider number of funds than is currently the case. As employers will only be required to contribute to 4 funds it is expected that this would be less costly than complying with options 1 or 2. However, this is likely to be minor as advances in software and electronic commerce (e.g. it is possible for funds to allow transactions to occur over the net) should mean that it is no more costly to contribute to 10 funds as it is to 4 funds.

1.91 Employers will face costs in determining which funds should be included in the 4 options provided to employees. These costs will be higher than under other options as employers are required to nominate the fund and not the employee. The costs will be more significant for smaller employers.

Fund/RSA providers

1.92 Fund/RSA providers will also need to produce PDSs for employers to provide to employees where the fund or RSA is the default fund. Funds will incur costs of developing the new disclosure documents especially those who are currently not required to provide a PDS. These include vetting by lawyers of the PDS as well as printing costs.

Recurrent costs

Employees

1.93 There will be additional record keeping requirements. Employees will need to keep track of what choices were offered and made, and when they were offered and made.

Employers

1.94 Employers will be required to distribute PDSs for nominated funds/RSAs to employees. These costs are likely to be higher than under option 2 because there will be a greater number of PDSs to distribute.

1.95 Employers will be required to provide advice to employees who are defined benefit members of a defined benefit fund. Data from the APRA states that there are 346 defined benefit funds with 195,000 members in the private sector. Anecdotal evidence suggests that many of these funds are closed to new members. Therefore, it is expected that this requirement will only affect a minority of employers.

1.96 There will also be additional record keeping requirements. Employers will need to keep track of what choices were offered and made, and when they were offered and made.

1.97 Employers will have reporting and remitting obligations under the Superannuation Guarantee scheme where they do not satisfy their obligations.

Fund/RSA providers

1.98 Nominated fund/RSA providers will be required to distribute PDSs to employers, who will provide the statements to employees. These costs are likely to be higher than under option 2 because there will be a greater number of PDSs to distribute. The funds will also have to keep the information in the PDS current. This is especially the case with information about fund returns which will have to be updated approximately every 12 months.

ATO

1.99 Reporting and remitting obligations imposed on employers will result in a complementary increase in workflows for the ATO. The costs of implementing and administering the measure would be similar to option 2.

1.100 Total compliance costs (costs incurred by employers, employees and fund/RSA providers) are set out in Table 1.3.

Table 1.3

<i>Impact group</i>	<i>Initial costs (\$m)</i>	<i>Recurrent costs (\$m)</i>
Employers	36	15
Employees	N/A	N/A
Fund/RSA providers	5	2

1.101 The costs for employees are not available due to difficulties in predicting how they will react to the measure.

Option 4

1.102 This option allows employees to choose either options 1 or 2.

1.103 This will enable an employee to choose whether they wish to enter into an informal agreement with their employer or take advantage of the unlimited choice option. For example, an employee may currently be a member of 2 funds – a fund set up by them and the one to which their employer is contributing. The employee can truncate the choice process by using option 1 to request the employer to contribute to their individual fund. This would mean that the employee does not have to wait 28 days for their employer to give them a standard choice form before they can request a choice. However, if they wanted the standard choice form and PDS before making a choice they can utilise option 2.

1.104 As outlined in paragraphs 1.60 to 1.85, the costs of those options varies according to the size and set up of the employer.

1.105 Total compliance costs (costs incurred by employers, employees and fund/RSA providers) are set out in Table 1.4.

Table 1.4

<i>Impact group</i>	<i>Initial costs (\$m)</i>	<i>Recurrent costs (\$m)</i>
Employers	less than or equal to 21	less than or equal to 15
Employees	N/A	N/A
Fund/RSA providers	5	2

1.106 Initial employer costs are the same as option 2 as employers will still be required to provide standard choice forms to existing and new employees. However, recurrent costs are likely to be lower than option 2. For example, employers can reduce their recurrent costs by accepting an employee's request under option 1 as they will not have to provide that employee with the standard choice form or PDS for the default fund. However, the extent to which costs will be lower is hard to quantify as it is difficult to estimate how employees will want to request a change of fund (i.e. using option 1 or option 2).

1.107 The costs for employees are not available due to difficulties in predicting how they will react to the measure.

1.108 The costs of implementing and administering the measure are similar to those set out in option 2 in paragraphs 1.69 to 1.85.

Analysis of the benefits of the implementation options

Option 1

1.109 While employees are not limited in their choice of fund or RSA, the degree of control they will have over their superannuation savings will be less than that provided under other options, because of the need for their employer to approve the choice. The choice employees make will be without the assistance of the information that must be provided under option 2 and 3.

1.110 There will still be increased competition between fund and RSA providers, however the extent of that increase will be limited by the need for employers to approve the employee's choice. For cost reasons, employers will probably have a strong preference to retain the existing fund or RSA.

Option 2

1.111 Employees will have unlimited control and choice over their superannuation savings, however they will likely need to seek information from alternative funds.

1.112 This option also places fewer burdens on employers than option 3 as they do not have to select 4 funds. However, they will need to have systems in place so they can contribute to multiple funds.

1.113 Option 2 provides the most competitive environment as funds will be trying to attract new members. Under this option, fund and RSA providers would focus their advertising on employees.

Option 3

1.114 This only provides employees with a limited choice of options which may not be relevant to their circumstances. This may lead to employees having to choose a fund which they believe is inferior to a fund they could choose under options 1, 2 or 4.

1.115 Employers will only have to contribute up to 4 funds but they will still have to go through a process of selecting the 4 funds they want to offer to their employees, and also provide PDSs for those funds to their employees.

1.116 There will be increased competition between fund and RSA providers. However, this will be competition based on attracting employers and not employees. Therefore, the benefits may not be as great as in option 1 or 2.

Option 4

1.117 The major benefit of this option is that this gives the final decision on how they want to exercise choice to the employee. Employees have the flexibility to select the approach which is best for them given their individual circumstances (i.e. do they want information or not) as well as any fund that can accept their employer's contributions.

Consultation

1.118 The Government previously engaged in consultation with a wide range of interested parties on the original policy proposal. These included the superannuation industry (in particular, the Association of Superannuation Funds of Australia and the Investment and Financial Services Association), employer groups (in particular, the Australian Chamber of Commerce and Industry), small business and those representing employee interests. The Government has proposed further enhancements to the original proposal. These enhancements will provide greater choice to employees as to which fund they can select as well as reducing the burden of choice on employers by removing some of the obligations previously placed on them.

Conclusion and recommended option

1.119 After careful consideration, the Government considers option 4 to be the most appropriate.

1.120 Providing choice of fund will necessarily increase costs for some employers. The Government believes the benefits of choice to employees and the community more generally, outweigh these costs.

1.121 The Government's preferred option provides employees with the ability to choose a fund in a manner which best suits their circumstances. This establishes a balance between giving individuals control over their superannuation savings and limiting costs to affected parties.

1.122 Option 4 therefore provides the greatest flexibility, potentially accessing the benefits under all options while keeping costs to a minimum.

1.123 Option 1 is likely to involve lower costs than any of the other options. However, the need for employer approval for an employee's choice of fund or RSA is likely to nullify the objectives of the proposal. Under this option, it may be the case that employees have no real control over their superannuation savings.